Borrower is requisted to check the book and get the signatures on the torned pages, if any.

QUESTIONS AND ANSWERS
ON
SECRETARIAL PRACTICE

QUESTIONS & ANSWERS
ON
SECRETARIAL PRACTICE

(E. J. HAMMOND)

FIFTH EDITION

BY

G. K. BUCKNALL, A.C.I.S. (Hons.)

AUTHOR OF "GUIDE TO COMPANY SECRETARIAL WORK," ETC.

WITH A FOREWORD BY

J. B. WELSON, LL.M., F.C.I.S., F.C.I.I.

Barrister-at-Law

LONDON

SIR ISAAC PITMAN & SONS, LTD.

1937

SIR ISAAC PITMAN & SONS, LTD.
PITMAN HOUSE, PARKER STRFET, KINGSWAY, LONDON, W.C.2
THE PITMAN PRESS, BATH
PITMAN HOUSE, LITTLE COLLINS STREET, MELBOURNE

ASSOCIATED COMPANIES
PITMAN PUBLISHING CORPORATION
2 WEST 45TH STREET, NEW YORK
205 WEST MONROF STREET, CHICAGO
SIR ISAAC PITMAN & SONS (CANADA), LTD.
(INCORPORATING THE COMMERCIAL TEXT BOOK COMPANY)
PITMAN HOUSE, 381-383 CHURCH STREET, TORONTO

FOREWORD

BY

J. B. WELSON, LL.M., F.C.I.S., F.C.I.I.

Barrister-at-Law

Many years' experience of preparing candidates for the examinations of the professional bodies of Secretaries has shown that the two subjects which give students the most trouble are "Secretarial Practice, including Minutes, Company Procedure, Meetings, etc.," in the Intermediate Examination, and "Secretarial Practice and Duties" in the Final Examination. While this was, no doubt, partly due to the scarcity of textbooks on the subject, it is evident that the reason lies deeper than this, because the same uneasiness continues to exist, though the scarcity of textbooks has to a great extent been remedied; and the conclusion is forced on one that the real reason is that this being eminently a practical subject, students feel the lack of that practical experience which is necessary to give them confidence. The student whose daily work is in the office of a big company knows that his particular duties are confined to but one or two sections of what is covered by the syllabus; while the student who is with a small company feels that his experience is thereby necessarily restricted. A similar state of things exists in the teaching ranks, and there is no doubt that there is still a scarcity of instructors who have at the same time the necessary teaching experience, knowledge of the theory, and practical experience.

The " Question and Answer " method of tuition has many advantages—especially to students who, when preparing for these examinations, are obliged to do their study after a strenuous day's office work. For one thing, it inculcates candidates into the habit of analysing and answering questions: a habit which is not only useful on the examination day, but is invaluable in everyday business life.

Nearly all examination papers contain some questions of a hypothetical nature, for which direct solutions are rarely found in any textbook. Such questions (of which there are many included in this volume) are set to test the candidate's ability in applying the basic principles of the subject. To

quote the words of one examiner: "The precise points involved in the question had not yet been judicially decided, but what was wanted of examination candidates, and what marks were awarded for, was a sensible answer fully supported by reasons, even though it might appear incorrect."

Opinions may vary as to the best method of using this book—whether students should write out answers to the questions and then compare their own efforts with the author's solutions, or simply read the book through, making notes of the salient features and basic principles. Circumstances will decide this question, but that this volume will be a great help to students will be speedily proved by a perusal of the following pages.

J. B. W.

PREFACE

THE purpose of this book is to give students and others, in the form of "Question and Answer," a clear insight into the practical methods and duties of company secretaries, ranging from the formation of the company onwards; the principal events that occur, or are likely to occur, during its existence; and various other duties connected with modern business practice. To this end the questions set at secretarial examinations over a period of several years have been collated, revised, and arranged in the various phases of company secretarial work.

The aim of the author and publishers being entirely educational, the "answers" are arranged not so much as model answers for examination purposes (although they will be extremely useful in that sphere), but more with a view of imparting to the student and younger practitioner reliable information and knowledge upon this fascinating subject. With this object, references to the various sections of the appropriate statutes are given; the legal dicta quoted from suitable cases; and where there are divergencies in practice, or in the statutory requirements, between companies registered under the Companies Acts, and Parliamentary or statutory companies, the essential particulars are given and comparisons drawn. In this respect, it is believed that the book is unique, and it is anticipated that the arrangement will prove advantageous and helpful to the practising as well as to the aspiring secretary.

In the preparation of this Fifth Edition, Mr. Percy J. W. Daniell, A.C.I.S., Gold Medallist of the London Chamber of Commerce in Secretarial Practice, Company Law and Commercial Law, has rendered valuable assistance.

G. K B.

CONTENTS

CHAP.		PAGE
	FOREWORD	v
	PREFACE	vii
I.	INTRODUCTORY	1
II.	SECRETARIAL DUTIES, CORRESPONDENCE, AND OFFICE ROUTINE	4
III.	THE FORMATION AND INCORPORATION OF COMPANIES	20
IV.	SHARE CAPITAL	39
V.	SHARES AND SHAREHOLDERS	52
VI.	TRANSFER AND TRANSMISSION OF SHARES	69
VII.	FORFEITURE OF SHARES	92
VIII.	DIRECTORS	98
IX.	STATUTORY AND OTHER BOOKS OF A COMPANY	107
X.	AUDITORS	119
XI.	PRIVATE COMPANIES	124
XII.	MORTGAGES AND DEBENTURES	129
XIII.	ACCOUNTS—DIVIDENDS	141
XIV.	CIRCULARS, NOTICES, AND REPORTS	152
XV.	AGENDA AND MINUTES	168
XVI.	RESOLUTIONS	184
XVII.	PROCEDURE AT MEETINGS	192
XVIII.	MEETINGS—VOTES AND VOTING PROCEDURE	213
XIX.	RECONSTRUCTION AND REORGANIZATION	223
	LAW REPORTS	230
	TABLE OF CASES	233
	INDEX	237

QUESTIONS AND ANSWERS
ON
SECRETARIAL PRACTICE

CHAPTER I

INTRODUCTORY

SECRETARIAL Practice has been described as "the most varied, the most evasive, and changeable subject that has yet been known." "Circumstances alter cases": the changeableness and variety of all secretarial work is largely occasioned by the many different classes of companies that are registered under the Companies Acts, including, as they do, manufacturing, industrial, commercial, financial, and mining concerns. Another factor is the wide latitude allowed to these companies of adopting their own by-laws and regulations or articles of association.

The model articles of association, known as Table A attached to the Companies Act, 1862, is usually termed the "original Table A." Under the auspices of the Board of Trade, this was brought into accord with modern requirements, and a Revised Table A was published in the *Gazette* of 31st July, 1906. With slight modifications, this revised Table A was appended to the consolidating Act of 1908, and, further modified, the Table is appended to the 1929 Act. At the present time there are companies in existence whose articles of association comprise the 1862 Table A, the 1906 Table A, the 1908 Table A, or the 1929 Table A (with or without modifications in each case); and also a large number of companies with special articles drafted to suit their own requirements. The 1929 Act renders many precedents obsolete, and its provisions vary to a considerable extent the effect of many clauses in the earlier Tables.

The by-laws or regulations of Parliamentary or Statutory Companies, i.e. companies which are formed for some object of public utility, are contained in the Companies Clauses

(Consolidation) Act, 1845, commonly referred to as Companies (Clauses) Act, 1845. The special Acts incorporating these companies invariably adopt the 1845 Act with such slight modifications as may be necessary, and this uniformity of regulations has resulted in a comparative freedom from legislation.

The passing of the Companies (Consolidation) Act, 1908, which came into force on 1st April, 1909, was a notable event in the history of company law. Prior to the passing of that Act, the statutes affecting companies comprised some seventeen Acts of Parliament and portions of several others. Naturally, the consolidation of these Acts effected a welcome simplification in Company Law. Whilst, however, the Consolidation Act codified the statute law, there was also a considerable amount of "Case Law," consisting not only of judicial decisions on the statute and its predecessors, but also on various matters affecting the internal regulations or articles of companies and the individual rights of the shareholders. Further short Acts were passed in 1913 and 1917, and on the 3rd August, 1928, was passed the Companies Act, 1928, which introduced several very important changes in the law, permitting for the first time the issue of redeemable preference shares and the issue of shares at a discount. It also abolished the pernicious practice of "hawking" shares, often of little value, by canvassing from house to house. The whole of the law has since been codified and consolidated in the Companies Act, 1929.

Some of the most important of the secretary's duties are those imposed by this statute. Hence a sound knowledge of Company Law and the statutory requirements is a *sine quâ non* to the company secretary. That the secretary's position is no sinecure is evidenced by the fact that he is personally liable for many fines and penalties if he fails to comply with the statutory requirements. For example, Section 362 of the 1929 Act provides that, if he wilfully makes a false statement in "any return, report, certificate, balance sheet, or other document" relating to the company and required by, or for the purposes of, the Companies Act, he is guilty of a misdemeanor, and he shall be liable to imprisonment and to a fine in lieu of or in addition thereto.

Various sections of the Companies Act indicate the personal responsibility of the secretary, yet the statutes do not specifically define his position, nor is it essential that the

position should be occupied by an individual. Even a limited company may act as secretary to another company, and it is somewhat anomalous that this should be possible. It will readily be seen that by this means some aspects of the personal responsibility may be evaded; His Majesty's Judges being unable to compel a "limited company" to become involuntary guests of the Prison Commissioners. It is more in harmony with the spirit of the Companies Act that the secretaryship of a limited company should be held by an individual who can be seen, consulted, and (where necessary) bear the brunt of personal responsibility for his acts, defaults and omissions.

CHAPTER II

SECRETARIAL DUTIES, CORRESPONDENCE, AND OFFICE ROUTINE

Two of the subjects of the Intermediate Examination of the Chartered Institute of Secretaries are described as "English" and "Secretarial Practice." An important section of the syllabus for the former deals with commercial correspondence. The correspondence dealt with at successive examinations has been most varied in character, ranging from letters of ordinary business routine to those of a highly technical nature. This chapter deals with some of the most interesting of these questions, as well as those relating to various other phases of secretarial routine. There is a Secretarial Practice paper in the Final Examination.

The Corporation of Certified Secretaries has Secretarial Practice papers (including correspondence) in both Intermediate and Final examinations.

THE SECRETARY'S DUTIES AND RESPONSIBILITIES

1. *Discuss the duties and responsibilities of the Secretary of a Joint Stock Company.* (C.I.S. Final.)

The duties and responsibilities of a company secretary necessarily differ, in scope and in character, according to the size of the company, the nature of the company's business, and the extent of the duties delegated to him by his directors. Generally speaking, however, secretaries may be divided into two main classes, the " routine " secretary and the " executive " secretary.

The work of a secretary in the first-named class is mostly of a stereotyped nature. He acts as " clerk " to the board, recording its actions and decisions, also acting as its " mouthpiece." The supervision of all issues of capital and debentures; the transfer and transmission of shares; preparation, issue, and payment of dividends; notices of meeting; agenda: the recording of these transactions in the various statutory and other books of the company, and the filing of the necessary returns with the Registrar of Companies, will naturally fall

within his sphere, and he will be responsible to the board for the due execution of these duties. The Companies Acts, the Stamp Acts, and the Income Tax Acts, *inter alia*, also impose personal responsibility on the secretary for the due compliance with certain provisions.

An " executive " secretary's duties, however, will be of much wider scope. In addition to the " routine " duties previously outlined, his principal duty will probably be that of organization, control, and responsibility for the whole of the company's clerical work. Correspondence generally, dealing not only with shares and transfers, but with various departments of the company's activities, will come under his purview, as well as matters dealing with costing, works accounting, commercial and company accounting, and the negotiation of sales or other contracts.

As the company's chief executive officer, he will form the principal connecting link between the directors and the staff: a position calling for the exercise of considerable discretion, tact, and judgment in the carrying out of the directors' decisions; the organization of various staff duties; and the adjustment of the many minor difficulties that constantly occur in everyday business life.

As an agent and confidential servant of the company, he will be entrusted with the confidence of the directors, and in that capacity will be the recipient of much confidential information, and his responsibility will be correspondingly of importance. Accidental or careless disclosure may have far-reaching consequences; hence the necessity for reticence is obvious.

On questions of policy and administration, the secretary may be consulted by his directors; and a man of judgment, tact, and experience will have unrivalled opportunities of contributing towards the comfort and efficiency of his staff, as well as the advancement of his company's interests and its success.

SECRETARY'S DUTIES AT BOARD MEETINGS

2. *What are the Secretary's substantive duties in preparing for, and during attendance at, Board Meetings?* (C.I.S. Final.)

The secretary's principal duties may be thus summarized—

1. To issue notices of the meeting to the directors.
2. To prepare the agenda for the meeting.

3. To arrange for the attendance at the meeting of other officials of the company, auditors, solicitors, or other persons whom the directors may desire to consult or interview.

4. To have in readiness all letters and other documents requiring the attention of the board, including cheques for signature: transfers to be passed, share certificates for sealing and signature, with the relative transfers, cancelled certificates, and the transfer register (if kept) for production as and when required.

5. To procure signatures of the directors present, in the Directors' Attendance Book.

6. At the meeting, to read the minutes of the previous meeting.

7. To produce the Banker's Pass Book, with a statement of the company's financial position.

8. As the meeting proceeds, to take notes of the business transacted, from which to write up the minutes.

9. To have in readiness the company's seal, and an indexed copy of the Memorandum and Articles of Association for instantaneous use and reference.

The secretary's personal duties will necessarily vary with different companies and, in practice, some of the duties outlined above will be performed by other members of the secretarial staff, but the secretary will be responsible for their due execution.

(*For the Secretary's duties at Shareholders' Meetings, see Question No. 205.*)

THE SECRETARY'S SIGNATURE

3. *Discuss the manner in which the secretary of a limited company should sign (1) letters, (2) circulars, (3) notices, (4) cheques, (5) bills of exchange. What does* per pro *signify and when is it permissible to use it?* (C.I.S. Inter.)

(1) Correspondence dealt with by the secretary on the company's behalf will require signature in his official capacity as indicated at (*a*). Where, however, letters are written in the first person ("I have the pleasure, etc."), the correct method of signature is shown at (*b*).

(*a*) Yours faithfully,
For The Z Y X Co., Ltd.,
V. Wyse, *Secretary.*

(*b*) Yours faithfully,
V. Wyse,
Secretary.

(2) and (3) Circulars, notices of meeting, and most official notices are issued in accordance with resolutions passed at board meetings. Whilst the secretary is sometimes entirely responsible for their production, these documents are more usually compiled and drafted in consultation with the

directors and are issued on their instructions. It is customary for them to be signed thus—

By Order of the Board,
V. WYSE, *Secretary.*

(3) Notices dealing with Transfer Registration and other routine matters that are entirely delegated to the secretary are usually signed in accordance with (*a*) above; but the practice is not universal. The specimen signature (*b*) is often used. In all notices, the subscription "Yours faithfully" is, of course, omitted.

(1) to (3) Many well-known companies, however, omit the use of the prefix "For" to the company's name; yet its use is distinctly advantageous, as it so clearly indicates that the letters, etc., are written "for the company."

(4) and (5) In order to ensure that no personal liability attaches to the officials signing Cheques or Bills of Exchange, the words "For and on behalf of" are prefixed to the company's name. The secretary should, as an indication that they are in order, sign the cheques before presenting them to the directors for signature, but on the cheque itself the secretary's signature is underneath that of a director. Endorsements are signed in a similar way, but usually the secretary's endorsement alone is sufficient on cheques.

Specimen: For and on behalf of The Z Y X Co., Ltd.,
..............................*Director.*
V. WYSE, *Secretary.*

In practice, however, it is usual for another official, such as the accountant or assistant secretary (but not usually the cashier), to endorse cheques. The bank will require the authority of a minute of the board, and a sufficient endorsement in such a case is—

per pro The Z Y X Co., Ltd.
A. COUNTANT.

Per pro is an abbreviation of *per procurationem*, and signifies that the person signing in this manner is acting on behalf of the person, persons, or company named above his signature. It is permissible only when, in fact, the signer has express authority delegated to him, and it operates as notice of a limited authority of an agent to bind his principal. In cases of doubt, verification of the authority should be required. The best example of correct usage is where a manager for a

sole trader or partnership, signs and endorses cheques, acceptances, or contracts in this style. Limited companies sometimes authorize a manager to sign contracts and operate a banking account (for small amounts) with a similar signature, thus—

per pro The Z Y X Co., Ltd.
A Dew, *Manager.*

The use of the word "Manager," however, is quite optional, and is sometimes omitted.

SPECIMEN LETTERS TO SHAREHOLDERS

4. *Write a letter to a shareholder who complains that, although he has advised you of his change of address, communications from your company continue to be sent to his former residence.* (C.I.S. Inter.)

THE Z Y X CO., Ltd.,
1 Fenchurch Avenue,
London, E.C.3. 1*st Dec.*, 19..

B. Sims, Esq.,
46 Chadwick Road,
Bathampton.

Dear Sir,

I duly received your letter of 29th Nov., notifying that communications from this office continue to be sent to your former residence. It is regretted that owing to an oversight on the part of one of our Registration Clerks, your earlier notification of change of address was overlooked. The needful corrections have now been made in the company's registers, and all further communications will be sent to your new address as above.

Please accept my apologies for any inconvenience that may have arisen.

Yours faithfully,
V. Wyse, *Secretary.*

Alternative Letter—

Dear Sir,

In reply to your letter of 29th Nov., a careful search has been made through the company's records, but we have been unable to trace receipt of your earlier letter notifying change of address. We regret that you have been put to any inconvenience, but the responsibility does not rest with us, as, apparently, your earlier letter miscarried.

However, we have now duly registered in the company's books your present address, as above, to which all communications in future will be sent.

Yours faithfully,
For The Z Y X Co., Ltd.,
V. WYSE, *Secretary.*

[Students should note the difference in style of the two foregoing letters and also compare the divergent signatures.]

INSTRUCTING SOLICITORS *RE* INCREASE OF CAPITAL, ETC.

5. *Your Board have decided to increase the capital of the company and to capitalize reserves. Write a letter to the company's solicitors, instructing them to draft the necessary resolutions, etc. Refer to any document which you consider should accompany your letter.* (C.I.S. Inter.)

THE Z Y X CO., LTD.,
1 FENCHURCH AVENUE,
LONDON, E.C.3. *1st Dec.*, 19..

MESSRS. SCRIVENER & CO.,
21 Old Jewry, E.C.1.

Dear Sirs,

I am instructed to inform you that at a Board Meeting held yesterday, it was decided to increase the capital of the company and to capitalize certain reserves. It is proposed to increase the company's capital from £100,000 to £150,000, capitalizing £50,000 from the General Reserve.

Will you please draft the necessary notices convening the general meeting and the resolutions to be submitted thereat? I enclose for your reference—

1. A copy of the Board's resolutions.
2. A Balance Sheet showing the reserves referred to.
3. A copy of the company's Memorandum and Articles of Association. Please refer to Articles Nos. .... and ....

A further Board Meeting will be held at 3 p.m. on 15th inst. to approve the draft notices and resolutions, and to sanction the calling of the general meeting. The attendance of Mr. Scrivener at that meeting is desired, so that he can confer with and advise the directors on any points that may arise during the discussion.

Yours faithfully,
For The Z Y X Co., Ltd.,
V. WYSE, *Secretary.*

BANKERS' LIEN ON SHARES

6. *Write a letter to Bankers who have given notice that they have a lien on certain certificates of ordinary stock of your company deposited with them by a shareholder.* (C.I.S. Inter.)

THE Z Y X CO., LTD.,
1 FENCHURCH AVENUE,
LONDON, E.C.3. *1st July*, 19..

THE MANAGER,
The Thames Bank, Ltd.,
Lombard Street, E.C.3.

Dear Sir,

With reference to your letter of yesterday's date, stating that your Bank have a lien on certain Stock Certificates of this company deposited with you, I have to inform you that under the provisions of Sec. 101 of the Companies Act, 1929, and also of this company's articles of association, this company and its officers are unable to recognize and will not recognize such lien or in any way act upon the said letter.

Yours faithfully,
V. WYSE, *Secretary*.

[*Note.* The correct procedure for a creditor (who has advanced moneys upon the deposit of certificates) is to serve a "Notice in lieu of *distringas*" upon the company under Rule 4 of Order 46 of the Supreme Court of Judicature. *See* Ques. No. 97.]

TEMPORARY LOAN FROM COMPANY'S BANKERS

7. *Write a letter to the company's bankers, confirming a verbal arrangement made with them in connection with a temporary loan.* (C.I.S. Inter.)

THE Z Y X CO., LTD.,
FENCHURCH AVENUE,
LONDON, E.C.3. *1st July*, 19..

THE MANAGER,
The Thames Bank, Ltd.,
Lombard Street, E.C.3.

Dear Sir,

We have pleasure to confirm the verbal arrangements made with you yesterday, regarding the temporary advance of £1,000 to this company for a period not exceeding six

months and to be repayable, in whole or in part, at any earlier date at this company's option. Interest to be charged at the rate of 6% (six per cent) per annum.

As security for the loan, we hand you the following documents—

1. Dock Warrant No. X 1105 for 1,200 chests of Tea.
2. Suppliers' Invoice showing C.I.F. value as £1,275.
3. Insurance Policy on the Tea for £1,500.
4. Copy of the Board's resolution (authenticated by the chairman) authorizing Mr. G. Zead to sign, on behalf of the company, the Letter of Hypothecation.
5. The Letter of Hypothecation, duly signed and sealed.

Please place the amount—£1,000—to the credit of our Current Account and let us have your formal acknowledgment of the enclosed documents.

We are, Dear Sir,
Yours faithfully,
For The Z Y X Co., Ltd.,
G. ZEAD, *Director.*
V. WYSE, *Secretary.*

ADVISING INSURANCE BROKERS OF A CLAIM

8. *Write a letter to a firm of insurance brokers reporting the loss of part of a consignment insured by them, and requesting them to put forward a claim on the marine underwriters.* (C.I.S. Inter.)

THE Z Y X CO., LTD.,
1 FENCHURCH AVENUE,
LONDON, E.C.3. *1st July*, 19..

MESSRS. A. WILLS & CO.,
32 Gracechurch Street, E.C.3.

Dear Sirs,

We regret to inform you that a loss has occurred on the consignment of

50 barrels Molasses ex s.s. "*Heather*" from New York, two barrels being delivered with staves broken, contents totally lost; and four barrels in a damaged, leaky condition, contents partly lost. The Dock Authorities have been instructed to repair and re-weigh the damaged barrels.

Will you please notify the underwriters; if they wish to instruct a surveyor to act on their behalf, the consignment can be inspected on application to the Superintendent, O. Warehouse, Victoria Docks.

The Insurance Policy is enclosed; a formal statement of claim, with documents in support, will be sent in due course.

Yours faithfully,
For The Z Y X Co., Ltd.,
V. WYSE, *Secretary.*

REPLY TO A DISSATISFIED SHAREHOLDER

9. *Write a reply to a shareholder who complains that the declaration of a larger dividend than that recommended by the Directors is justified by the profits earned by your Company during the year.* (C.I.S. Inter.)

THE Z Y X CO., LTD.,
1 FENCHURCH AVENUE,
LONDON, E.C.3. *1st July,* **19**....

B. SIMS, Esq.,
46 Chadwick Road,
Bathampton.

Dear Sir,

In reply to your letter of 30th June, I have to inform you that, before deciding upon the rate of dividend, the directors fully considered the various points which you raise in your letter now under reply. It was considered that the wisest policy to pursue in the company's best interests was to limit the dividend to the rate announced, so as to conserve the company's financial resources in view of the high bank rate, the high prices of raw materials, and the general uncertainty of trading conditions.

This policy will, it is confidently anticipated, strengthen the company's position and enable the directors to take immediate advantage of any improvement in trade.

The Chairman proposes to deal more fully with this matter in his speech at the Annual General Meeting on the 12th inst.

Yours faithfully,
V. WYSE, *Secretary.*

STOCK EXCHANGE QUOTATION

10. *Write a letter to your company's brokers instructing them to apply to the Stock Exchange Committee to grant a quotation for the Ordinary and Preference Shares of your company. Is such permission necessary?* (C.I.S. Inter.)

THE Z Y X CO., LTD.,
1 FENCHURCH AVENUE,
LONDON, E.C.3. *1st July*, 19....

MESSRS. A. BROWN & CO.,
Copthall Court, E.C.2.

Dear Sirs,

I am desired by my Directors to instruct you to apply to the Stock Exchange Committee for the grant of a quotation in the Official List for the

100,000 Six per cent Preference Shares of £1 each,
50,000 Ordinary Shares of £1 each,

forming the capital of this company subscribed by and issued to the public.

Two certified copies of the Prospectus and the Memorandum and Articles of Association are sent herewith. Will you please forward me a copy of the Official Application Form, together with detailed particulars of the requirements of the Committee relative to the grant of an Official Quotation?

Yours faithfully,
V. WYSE, *Secretary*.

It is necessary to obtain the permission of the Stock Exchange Committee before the shares can be quoted in the Stock Exchange Official List. The Official Quotation may not be a necessity; but it is clearly advantageous to public companies, as it facilitates transactions in the shares and thus enhances their value.

Note. Before an Official Quotation is granted, the Stock Exchange Committee will require to inspect, *inter alia*—

1. The Certificate of Incorporation.
2. The Certificate entitling the company to commence business.
3. The Original Letters of Application and Allotment Sheets.
4. Specimens of the Allotment Letter and Share Certificates.
5. Certified copies of contracts and agreements.

A Statutory Declaration by the Chairman and the Secretary is also required, verifying certain facts and particulars in the formation of the company, including, *inter alia*—

1. The compliance of the prospectus with the requirements of the Companies Act.
2. The filing of the prescribed documents with the Registrar of Companies.
3. The applications by, and allotments to, the public and the payments thereon.
4. The allotment of shares for a consideration other than cash.
5. The completion of the purchase of properties from the vendor.
6. The issue of the Share Certificates to the allottees.

The Stock Exchange Committee also require the Articles to contain certain provisions and for the Share Certificates to be in an approved form. Similar regulations apply to the grant of a quotation for Debentures or Debenture Stock.

SERVICE OF DOCUMENTS

11. *How is service of a document effected* (a) *on a company,* (b) *by a company on a member?* (C.I.S. Inter.)

Section 370 of the Companies Act, 1929, provides that a document may be served on a company by leaving it at or sending it by post to the registered office of the company; and Section 380 states that "Document" includes "summons, notice, order, and other legal process, and registers." Similar provisions apply to statutory companies, by Section 135 of the Companies (Clauses) Act, 1845; but the notice may be left at the "principal office of the company," and the section also provides for personal service on the secretary or any other director.

Where litigation is concerned, it is often the practice for directors to arrange with the company's solicitors for the latter to accept "service" on the company's behalf.

With regard to service of documents on a member, the articles of association prescribe the regulations to be observed in the service of notices for ordinary companies, and similar regulations for "Statutory Companies" are included in Sections 136 to 138 of the 1845 Act. These regulations provide that service may be effected either personally or by sending the document by post to the member at his registered address.

Where a member has no registered address in the United Kingdom, service is effected by a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the company's registered office. With regard to joint holders, it is usual for notices to be served upon the holder named first in the register; whilst for deceased or bankrupt members, notices are served by post to their representatives at the address supplied by the persons claiming to act in that capacity. (See Table A, Clauses 104–106.)

Service of any document which is not a "notice" must be effected personally upon the member or his legal representative by a duly authorized officer, unless provision has been made by "special articles" for service otherwise.

LOST CHEQUE AND BILL OF LADING

12. *What steps would you take on receiving advice that a letter posted from your office, containing a Cheque and a Bill of Lading, had failed to reach the addressee?* (C.I.S. Inter.)

The first step to be taken would be to notify the bank on whom the cheque was drawn and stop payment of the cheque. Notification should also be given to the shipping company and a stop placed on the delivery of the goods represented by the bill of lading, except to the order of the addressee of the letter.

Bills of Lading are usually issued "in a set" of two or three, "one of which being accomplished, the others become void," so a duplicate bill of lading should be sent to the addressee, who will thus be able to obtain delivery of the relative merchandise. (It is assumed that the addressee is either the consignee or the agent of the consignee.) In the absence of the duplicate bill of lading, the shipping company will require a Letter of Indemnity, and may also require it to be supported by a banker's guarantee, before delivery can be effected.

After ascertaining that the original cheque has not been presented at the bank for payment, a new cheque should be issued to the addressee. It may be desirable to obtain a letter of indemnity from the addressee, but this will depend upon circumstances and the relationship of the parties.

Notification of the loss should also be given to the Secretary of the General Post Office, with a view to the missing letter being traced.

THE FINANCE OF FOREIGN TRADE

13. *Describe the method of financing foreign trade in connection with any business with which you are acquainted.* (C.I.S. Final.)

[*Note.* This "question" obviously calls for one "method" only; but the following "answer" deals with both export and import trade in a wider sense than the examiner required, so as to afford students fuller information.]

FOREIGN EXPORT TRADE is financed, to a large extent, by means of Documentary Drafts. Sometimes, the foreign merchant will arrange a credit in favour of the English shipper with a London banker, and, after shipment has been effected, the exporter will draw a Bill of Exchange (usually in a set of three) upon the foreign buyer and present it to the banker together with the complete set of Bills of Lading, Insurance Policy, and Invoices in triplicate. In exchange, the exporter receives a cheque for the full amount of the invoice. The banker forwards the documents to his agent at the port of destination, who presents them to the consignee. The latter pays the amount due to the agent, who accounts to the London banker for the proceeds, either by "credit in *contra* account" or by remittance.

Where credit has not been arranged, the shipper may hand the drafts to his bankers for collection, but this will involve delay in obtaining payment. More usually, the shipper "sells" the draft to the banker with all the documents attached and, occasionally, also a letter of hypothecation. The banker sometimes purchases the draft outright; but in other instances only advances, say, 80 per cent of the amount immediately, and after he has received the proceeds from his agent abroad, he accounts to the shipper for the balance, deducting charges for commission, interest, etc.

In the event of the bill being dishonoured by the consignee, the goods will be landed and warehoused at the port of arrival by the agent, and eventually sold or returned to the shipper. Any loss sustained by the banker must be made good by the shipper.

IMPORT TRADE. The financing of the import trade is also largely accomplished by means of documentary drafts, but the methods employed vary according to whether the merchant purchases on a F.O.B. (free on board) basis at the port of shipment abroad or on a C.I.F. (cost, insurance, and freight) basis at an English port of arrival.

With an F.O.B. contract, the English merchant arranges for a credit to be opened with a bank at the port of shipment. The colonial or foreign producer, after effecting shipment, draws a Bill of Exchange upon the London buyer, and presents the draft with the Bill of Lading and invoice attached to the local bank, receiving payment in local currency. The local bank then forwards the documents to a London bank, from whom they are "taken up" and paid by the English merchant. It is customary to cable an "advice of shipment" to enable the importer to insure the consignment and to arrange, in advance, for the acceptance and payment of the draft on its arrival and presentation.

For a C.I.F. contract, however, the English merchant usually only "takes up" and pays the draft upon the arrival of the steamer (in which the goods are carried) at the port of destination. The practice varies according to the custom of various trades and the terms actually arranged. In some instances, the drafts are "accepted" by the merchant on arrival of the documents by mail, the documents being returned to and retained by the bank until maturity of the draft, when they are delivered to the merchant against payment. When the cargo steamer arrives before the due date of the draft, the latter is "taken up" by the merchant "under rebate," i.e. it is paid, less an allowance for interest for the unexpired term of the draft.

Where large consignments are involved, or where merchants are receiving "seasonal" supplies of produce or raw materials, the assistance of bankers is often required to finance the shipments. The importer signs a "General Letter of Hypothecation" and, usually, the banker will advance 80 per cent of the market value. As the advances are made, the documents automatically pass into the banker's possession. Upon the arrival of the steamer, the documents are entrusted to a shipping agent, who attends to the clearance and delivery of the goods, which are "warehoused" in the name and "to the order" of the banker. In many cases the documents are handed "in trust" to the merchant, who attends to the

clearance, etc., and in due course hands the Dock Warrants or Warehouse Receipts to the banker. Periodically, as the merchant sells and disposes of portions of the consignments, the banker releases the equivalent Dock Warrants or Warehouse Receipts, and the merchant applies the proceeds of the sale as a reduction of the banker's advance, until the whole amount has been repaid.

DOCUMENTARY DRAFTS

14. *Assuming you have bought in London 500 cases of pineapples for shipment from Singapore to New York, enumerate the documents you would expect to receive against payment and state shortly the purposes of each.* (C.I.S. Inter.)

In the ordinary way, where shipments of produce are financed by documentary drafts (the consignee and the drawee being the same person or firm), the documents attached to the Bill of Exchange will include Bill of Lading, Insurance Policy, and Suppliers' Invoice. Certain countries also require a Certificate of Origin and/or a Consular Invoice.

This question, however, indicates that the consignee is resident in New York, whilst the drawee of the Bill of Exchange is, presumably, domiciled in London. Hence, to enable the consignee to obtain delivery of the produce on the steamer's arrival at New York, the Bill of Lading, Insurance Policy, Suppliers' Invoice, and Consular Invoice must be sent direct from Singapore to New York. Sometimes they are sent direct to the consignee, but, more usually, they are sent to the New York branch of the Singapore bank, which negotiates the draft.

The documents which should be presented to the London merchant are—

1. Bill of Exchange, which may be in dollar currency or British sterling. The object of this draft is to facilitate payment between the parties; the consignor receiving payment from the Singapore bank, which transmits the documents to its London office, and the latter receives payment from the London merchant.

2. Suppliers' Invoice showing marks and numbers of the packages, detailed particulars of their contents, freight and

insurance charges according to the terms of the purchase contract.

3. A certificate from the Singapore bank certifying that the Bill of Lading, Insurance Policy, Consular Invoice, etc., have been forwarded to its New York branch.

In the event of non-payment by the London merchant, the London office of the Singapore bank will cable the New York office to that effect, and the latter, instead of delivering the documents to the consignee, will arrange for the produce to be landed and warehoused in the bank's name pending further arrangements.

[*N.B.* For examination purposes, the first two and the last paragraphs of this "answer" are not required. The information is given to enable students to obtain a clear view of the whole transaction.]

CHAPTER III

THE FORMATION AND INCORPORATION OF COMPANIES

THE large majority of companies are incorporated under the provisions of the Companies Act, 1929 (or its predecessors, the 1862 or 1908 Acts) and are formed mainly for the purposes of carrying on commercial enterprises, finance, insurance, banking, or some manufacturing or industrial concern. The scope of the Companies Acts, however, is very wide, and associations for the promotion (*inter alia*) of science, art, and charitable undertakings have been registered under these Acts as companies.

There is, however, another class of companies, known as Parliamentary or statutory companies, which are incorporated under the authority of special Acts. The objects of these companies are to work undertakings of a public nature, e.g. railway, gas, water, and many other undertakings of public utility. The provisions of the Companies Clauses Act, 1845, are usually adopted in the special Act (which corresponds to the Memorandum of Association of registered companies), and, where applicable, one or more of the following Acts—

The Land Clauses Consolidation Act, 1845 ;
The Railway Clauses Act, 1845 ;
The Gasworks Clauses Act, 1847 ;
The Waterworks Clauses Act, 1847.

Whilst the formation of these companies is outside the scope of this book, many of the regulations of the Companies Clauses Act, 1845 (which corresponds to the Articles of Association of registered companies), are discussed later in the appropriate chapters. Practically the whole of the questions dealt with in the present chapter relate to companies formed under the 1929 Act.

THE FORMATION OF A COMPANY

15. *What steps are necessary to the formation of a company limited by shares ?* (C.I.S. Inter.)
16. *Describe the principal steps in the formation of a company.* (C.I.S. Final.)

Any seven persons (two for a private company) may associate together for the formation of a company. The

following documents must be filed with the Registrar of Companies—

	Fee Stamp. s. d.	Stamp Duty.
Memorandum of Association (*a*) . .	—	Deed stamp 10*s*.
Articles of Association	5 –	,, 10*s*.
Statement of Nominal Capital (*b*). .	—	*a.v.* 10*s*. per cent
Situation of Registered Office (within 28 days)	5 –	—
Statutory Declaration of compliance with Companies Acts as to all matters incidental and precedent to the registration of the company.	5 –	—
List of persons who have consented to become directors	5 –	—
Form of consent to act as a director .	5 –	—
Contract by directors to take and pay for qualification shares. (This is not required where directors sign the memorandum for their qualification shares).	5 –	Agreement stamp (6d.) for each director

	£ s. d.
(*a*) The capital duty chargeable on the Memorandum is for the first £2,000 . .	2 – –
Each additional £1,000 or part thereof up to £5,000	1 – –
Over £5,000, each additional £1,000 or part thereof up to £100,000 . . .	5 –
Over £100,000, each additional £1,000 . .	1 –

No company is liable to pay a greater amount of capital duty than £50.

N.B.—The capital duty (*a*) charged on the Memorandum is quite distinct and a separate charge from the stamp duty (*b*) on capital.

The Registrar of Companies issues the Certificate of Incorporation.

The prospectus must then be prepared and filed with the Registrar, after which it is issued to the public. When applications to the amount of the minimum subscription, together with the application moneys, have been received, the directors will allot the shares, and Letters of Allotment (or Regret where applicable) will be issued to the applicants. Alternatively, where the shares are wholly subscribed by the directors and their friends, and no public issue of a prospectus is made, a Statement in Lieu of a Prospectus must be filed. In this case no minimum subscription is necessary, because, there being no appeal to the public, no persons can be misled. The purchase contracts with the vendors will be approved

and sealed by the directors, and shares allotted in accordance with the terms of the contract.

Within one month of the allotment, a Return of Allotments must be filed with the Registrar (Sec. 42). A Statutory Declaration by the secretary or one of the directors that—

(*a*) Shares subject to the payment in cash have been allotted to an amount not less than the minimum subscription; and

(*b*) The directors have paid the amounts due on application and allotment on their qualification shares,

must also be filed, under the provisions of Section 94 of the 1929 Act, after which the Registrar issues the certificate entitling the company to commence business.

[*Note.* The incorporation of private companies is dealt with in Ques. No. 136.]

DIVERSE CLASSES OF COMPANIES

17. *What classes of companies or associations may, and what classes must, be registered under the Companies Acts?*

18. *State the various classes of companies that can be formed under the Companies Acts, and mention the main characteristics of each.* (C.I.S. Inter.)

Under the Companies Act, 1929, an association consisting of two persons may be registered as a private company.

Any seven or more persons may be associated together for any lawful purpose and registered under the Companies Acts as an incorporated company, as—

(1) A company limited by shares; or
(2) A company limited by guarantee; or
(3) A company with unlimited liability.

Any company, association, or partnership consisting of more than ten persons in a banking business, or twenty persons in any other business, must be registered under the Companies Acts, unless it is formed under some other Act of Parliament, or letters patent, or is a company working mines within the stannaries.

The main characteristic of—

(1) A company limited by shares is that the liability of the members is limited to the amount unpaid on their shares;

(2) A company limited by guarantee is that the liability of the members is limited, in the event of a winding up, to the amount of their guarantee; and

(3) An unlimited company is that the liability of the members is unlimited.

Specimens of memorandum and articles of guarantee companies with share capital, and of unlimited companies with share capital, are set out in Table D and Table E respectively to the First Schedule of the Companies Act, 1929.

A COMPARISON OF MEMBERSHIP OF A COMPANY AND A PARTNERSHIP

19. *Contrast the position of members of a partnership with members of a Registered Company in the matter of control over the business carried on by each.* (C.I.S. Inter.)

The ordinary members of a partnership have the fullest powers of control over the property and assets of the partnership, and in the management of its business or affairs. Limited partners, registered under the Limited Partnerships Act, 1907, are in the position of "sleeping" partners and take no active part in the management.

Members of a registered company, however, have only a limited form of control, which is exercisable at general meetings of the company, and consists of—

1. The appointment and remuneration of the directors who manage and direct the company's business on behalf of its members.
2. The appointment and remuneration of auditors, who examine the company's books and accounts, and report to the members on the accuracy of the balance sheets submitted to the members.
3. The approval of the directors' reports and accounts, and the sanction of their proposals for distribution of profits.
4. The approval of alterations or revisions of the company's memorandum and articles of association.

Members of a partnership are agents of the firm, and the latter is bound by the acts of its members. Shareholders are not agents of the company and, individually, have no authority to bind the company by their acts.

MEMORANDUM AND ARTICLES OF ASSOCIATION

20. *Explain shortly the respective functions of the Memorandum of Association and the Articles of Association of a limited company.* (C.I.S. Inter.)

21. *Compare and explain shortly the main differences between the Memorandum and Articles of a limited company.* (C.I.S. Inter.)

The memorandum of association is the document setting forth the name, domicile, objects and powers, the limitation of the members' liability, and the share capital of the company. It is the company's charter defining and limiting its field of operations.

The articles of association are the regulations defining (1) the duties, rights, and powers of the directors or managers as between themselves and the shareholders; (2) the mode of management of the company's business; and (3) the rights and privileges of the shareholders individually.

Whilst the memorandum contains the objects and powers of the company, the articles contain the regulations by which the objects and powers are carried into effect.

THE EFFECT OF THE MEMORANDUM AND ARTICLES

22. *What is the statutory effect of a Company's Memorandum and Articles of Association?* (C.I.S. Final.)

23. *What is the legal effect of the registration of the Memorandum and Articles of a Company:*
    (a) *As between the company and its members?*
    (b) *As between the company and non-members?*
    (c) *As between the members?* (C.I.S. Final.)

The statutory effect of the memorandum and articles is—

To bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.—(*Sec. 20 of the 1929 Act.*)

(*a*) As between the company and its members, the members are bound to the company, and equally the company is bound to the members. Thus the company can sue a member to enforce his obligations under the articles, e.g. payment of calls. If the company disregards its memorandum or articles, a member can sue the company, e.g. an invalid forfeiture of shares.

(*b*) As between the company and non-members, no contract

exists. Non-members are not parties to the memorandum and articles. Even where the articles name an individual as the solicitor to the company, no contract exists by reason of the articles. The articles are an agreement between the members to employ the solicitor named, but should the company not employ that solicitor, the latter will have no right of action unless a separate contract exists between himself and the company. (See *Eley* v. *Positive Life Assurance Co.*, *1876.*)

The memorandum and articles, however, are public documents which can be inspected at Bush House, London, and persons dealing with the company are deemed to have notice of their contents. Where the directors have power to bind the company, non-members are not bound to inquire whether all the prescribed steps have been taken. Thus, in *Royal British Bank* v. *Turquand*, 1856, the directors had power to issue bonds, if authorized by resolution of the company. No resolution had been passed, but a bond was issued to T. It was held that T. was entitled to assume that a resolution had been passed and that he could sue on the bond.

(*c*) As between the members, the effect is that of a specialty contract by each member of the company, regulating their individual rights in the company. These rights are held mutually, and cannot be severed so as to form individual contracts between one member and another. "Such rights can only be enforced by or against a member through the company or through the liquidator representing the company." (*Welton* v. *Saffery*, *1897.*)

THE USE OF THE WORD "LIMITED"

24. *Summarize the statutory provisions as to the use of the word "Limited."*

Companies registered under the Companies Act, 1929 (or the 1862 Act and 1908 Act), must have the word "Limited" as the last word of their names.[1] The Board of Trade has, however, power to grant licences enabling certain associations to dispense with its use. (See Ques. No. 26.)

The name of the company (with the word "Limited") must be conspicuously and legibly painted or affixed to the outside of every office or place in which its business is carried on. It must also be used on the company's seal, on all

[1] Except in the rare cases where a company is unlimited.

cheques, bills of exchange, orders, letters, invoices, advertisements, notices, and other official publications.

Every director, manager, secretary, or other officer—as well as the company—is liable to a penalty of £5 per day for failing to have the company's name painted or affixed to its premises. Where cheques and/or other documents are issued without using the word "limited," the directors and every official of the company are liable to a penalty of £50 and, moreover, will be personally liable to the holder of the Bill of Exchange or other document, unless the amount due thereon has been duly paid by the company. (Sec. 93 of the 1929 Act.)

Persons improperly using the word "Limited," or any oontraction or imitation of that word, not being a limited company, are liable to a penalty of £5 per day. (Sec. 364.)

COMPANY LIMITED BY "GUARANTEE"

25. *State the necessary contents of the Memorandum cf Association of a company limited by guarantee, not having a share capital. What are the objects of this form of incorporation?* (C.I.S. Inter.)

26. *In what circumstances will the Board of Trade allow the incorporation of a company under the Act of 1929 without the addition of the word "Limited"?* (C.I.S. Inter.)

The essential contents of the memorandum are—

1. The company's name, with "Limited" as the last word.
2. Where the registered office of the company is to be situated, whether in England or in Scotland.
3. The objects of the company.
4. A declaration that the liability of the members is limited.
5. A declaration that each member undertakes to contribute a certain sum to the assets of the company in the event of its being wound up. (See Table C of Schedule I of the Act.)

This form of incorporation is adopted by societies or associations formed for the promotion of art, science, trade protection, clubs, etc., where the acquisition of profit or gain is not an "object" of the company. Such a company relies upon the annual subscriptions of its members for its income, which is expended for the benefit of members generally and in the promotion of the objects as defined in its memorandum

Under the provisions of Section 18 of the 1929 Act, the

Board of Trade is empowered to issue licences for the registration of a company with limited liability without the addition of the word "Limited" to its name, provided that it is proved to the satisfaction of the Board of Trade—

(1) That the association is being formed for the promotion of commerce, art, science, religion, charity, or some other useful object;

(2) That its income and profits will be expended in the promotion of its objects; and

(3) That it will prohibit the payment of any dividend to its members.

These associations are usually formed as companies limited by guarantee. They enjoy all the privileges of ordinary limited companies and are subject to most of their obligations.

CERTIFICATES ISSUED BY THE REGISTRAR

27. *Mention and explain shortly the effect of the various Certificates which have to be issued by the Registrar of Joint Stock Companies in connection with a limited company.* (C.I.S. Inter.)

The certificates issued by the Registrar are—

(1) **The Certificate of Incorporation.** This is issued when the memorandum of the company is first registered, and the effect is to certify "that the company is incorporated, and in the case of a limited company that the company is limited." (Sec. 13 of the 1929 Act.) The certificate is conclusive evidence of the company's incorporation. (Sec. 15.) From the date of incorporation the subscribers and such other persons as from time to time become members form a body corporate, capable of exercising the powers of an incorporated company, having perpetual succession and a common seal.

(2) **Amended Certificate of Incorporation** is issued when a company changes its name. (Sec. 19 (4).)

(3) **Certificate of Alteration of Objects Clause in the Memorandum.** This certificate certifies the registration of an office copy of the Court's order approving the alteration and a printed copy of the memorandum as altered. It is conclusive evidence that the requirements of the Companies Acts with regard to the alteration and confirmation have been complied with. (Sec. 5, sub-sec. 6.)

(4) **The Certificate of Reduction of Capital** certifies the registration of a copy of the Court's order and a minute

(approved by the Court) showing the details of the company's share capital as altered by the order. This certificate is "conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital is such as is stated in the minute." (Sec. 58, sub-sec. 4.)

(5) **The Certificate entitling the Company to commence business** is issued to *public* companies under the provisions of Section 94, after a statutory declaration has been filed with the Registrar that the specific requirements of that section of the 1929 Act have been complied with. Its effect is to enable the company to commence business and exercise its borrowing powers. Sub-section 3 of Section 94 provides that the certificate "shall be conclusive evidence that the company is so entitled."

(6) **Certificate of Registration of Charges.** Where particulars of charges have been filed with the Registrar pursuant to Section 79, a certificate of the registration is issued, and Section 82 provides that the certificate shall be conclusive evidence of such registration.

(7) **Memorandum of Satisfaction of Charge.** When evidence is given to the satisfaction of the Registrar that the debt for which any registered charge was given has been paid or satisfied, the Registrar may order that a memorandum of satisfaction be entered on the register and, if required, furnish the company with a copy thereof. (Sec. 84.)

THE COMPANY'S NAME

28. *What statutory provisions are there as to the name of the company?* (C.I.S. Inter.)

The word "Limited" must appear as the last word of a company's name where the company is limited by shares or by guarantee (Sec. 2). A company's name must not be identical with that of another existing company already registered or so nearly resembling that name as to be calculated to deceive. Where, however, a company is being wound up, and signifies its assent, its name may be used by a new company. Companies being wound up for purposes of reconstruction often adopt this course. In any other instance, the name can be altered only by special resolution and the sanction of the Board of Trade. (See Sec. 19.)

The name of a registered company cannot include the words *Royal*, *Imperial*, *Municipal*, *Chartered*, *Co-operative*, *Building Society*, *Chamber of Commerce*, or (under various statutes) *Red Cross*, *Geneva Cross*, *Anzac*, *Bank*, *dentist*, *veterinary surgeon*, etc.

Section 93 provides that a company's name must (i) be painted or affixed on the outside of every office or place in which it transacts business; (ii) be engraved on its common seal; and (iii) appear on all documents, notices, advertisements, and other official publications.

CHANGE OF NAME

29. *Explain the steps which must be taken by a company effectually to change its name.* (C.I.S. Inter.)

The company must, under the provisions of Section 19 of the 1929 Act—

1. Pass a special resolution authorizing the change of name.
2. Obtain the approval of the Board of Trade to the proposed change.
3. File with the Registrar of Companies a printed copy of the special resolution and the written consent of the Board of Trade.
4. Obtain from the Registrar a certificate of registration of the new name.

ALTERATION OF THE OBJECTS CLAUSE

30. *Describe the procedure for altering the objects clause of a company's Memorandum of Association.* (C.I.S. Inter.)

31. *What alterations can be made in the objects clause of a company's Memorandum of Association?* (C.I.S. Inter.)

A company is empowered, by Section 5 of the 1929 Act, to alter the objects clause of its memorandum where the alterations will enable it—

(*a*) To carry on its business more economically or more efficiently.
(*b*) To attain its main purpose by new or improved means.
(*c*) To enlarge or change the local area of its operations.
(*d*) To carry on some business which, under existing circumstances, may conveniently or advantageously be combined with the business of the company.
(*e*) To restrict or abandon any of the objects contained in its memorandum.
(*f*) To dispose of the undertaking.
(*g*) To amalgamate with any other company or body of persons.

A Special Resolution, passed by a three-fourths majority at

a duly convened Extraordinary General Meeting, will be required to effect the alterations, and they must be subsequently confirmed by the Court.

Notice must be given to every debenture holder and to any person or class of persons whose interests may be affected by the alteration, and the consent obtained or the debt satisfied of every creditor who is entitled to object.

After the alterations have been confirmed by the Court, an office copy of the Court's Order, with a printed copy of the memorandum as altered, must be delivered to the Registrar of Companies. The Registrar issues a certificate of the registration of the altered memorandum, which then becomes the memorandum of the company.

ALTERATION OF THE ARTICLES

32. *Explain in detail how the articles of a company can be altered. Are there any limits upon the power of alteration?* (C.I.S. Inter.)

33. *Outline the procedure required for altering the Articles of Association of a limited company, giving an illustration, if possible, of such an alteration.* (C.I.S. Inter.)

34. *What limits are there to the right of a company to alter its articles?* (C.I.S. Final.)

The manner in which the articles of association may be altered is prescribed by Section 10 of the 1929 Act, viz., by special resolution. Due notice must be given (in accordance with the provisions of the existing articles) of the Extraordinary General Meeting at which the resolution will be submitted. The resolution must be passed by a three-fourths majority of those entitled to vote, and who do so vote in person or by proxy. A printed copy of the resolution must be filed with the Registrar, and every copy of the articles subsequently issued must contain a copy of the resolution.

Any proposed alterations must—

(1) Not be in conflict with statute law; and

(2) Be within the scope of the memorandum.

For example, an article or proposed article which declares that " the articles of the company are unalterable," is invalid, since the power to alter articles is a statutory right conferred by Section 10 of the 1929 Act.

Further, any article or alteration thereof, which purports

to extend the scope of the memorandum, is invalid and *ultra vires*. All alterations must be *bona fide* for the benefit of the company as a whole. The rights of the minority are strongly supported by the Courts, and any fraud or unfair treatment on a helpless minority would be suppressed.

Examples of valid alterations of the articles are—

1. An increase (or reduction) in the total number of directors.
2. A revision of the quorum of directors at a board meeting, or of members at a general meeting.

PROSPECTUS

35. *What is the statutory definition of a prospectus, and what are the statutory provisions regarding dating and filing thereof?* (C.I.S. Inter.)

Section 380 of the 1929 Act defines a prospectus as—

"Any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company."

Every such prospectus must be dated and signed by every person therein named as a director or proposed director, or by his agent authorized in writing. Until the contrary is proved, that date shall be taken as the date of publication. The prospectus must, on or before the publication date, be filed with the Registrar of Companies, and no copy may be issued until it has been so filed. Every copy issued must state on the face of it that it has been filed with the Registrar. (See Sect. 34.)

STATEMENT IN LIEU OF A PROSPECTUS

36. *What is a statement in lieu of a prospectus, and in what cases must such a statement be filed?* (C.I.S. Inter.)

A statement in lieu of a prospectus is the document which has to be filed with the Registrar by public companies which do not issue and file a prospectus on or with reference to their formation or, having issued a prospectus, do not proceed to allot any of the shares (or debentures) offered to the public for subscription. This statement must contain most of the information which would be required in a prospectus. The following particulars, *inter alia*, must appear—

(*a*) The capital of the company and its division into shares.
(*b*) Particulars as to redeemable preference shares.

(*c*) The names, etc., of the directors or proposed directors and auditors.

(*d*) The rights conferred by respective classes of shares.

(*e*) Shares and/or debentures agreed to be issued as fully paid for a consideration other than cash and the nature of the consideration.

(*f*) The names, etc., of vendors and details of the property purchased or proposed to be purchased or acquired, and the amount payable therefor in cash, shares or debentures, specifying separately the amount payable for goodwill.

(*g*) Dates and parties to every material contract affecting the company.

(*h*) Nature and extent of any directors' interest in the promotion of the company or the property to be acquired by the company.

(*i*) The net profits in respect of three years of any business proposed to be acquired. (See Schedule V.)

This statement must be filed at least three days before any shares or debentures can be allotted.

The Companies Act, 1929, also provides (Schedule III) a form of statement in lieu of prospectus to be filed by a private company on becoming a public company.

JOINING THE BOARD AFTER ALLOTMENT

37. *A prospectus contains the statement that "Mr. A will join the Board after allotment." Of what statutory obligations, if any, are the company and Mr. A respectively thereby relieved?* (C.I.S. Final.)

The company is not relieved from the obligation imposed by Section 35 and Schedule IV of the 1929 Act to disclose full particulars of the nature and extent of the interest of Mr. A (as a director) in the promotion of the company or in the property to be acquired by the company.

Section 37 (1) (*b*) of the Act places Mr. A within the category of a "proposed director," for he has authorized himself to be named in the prospectus as having agreed to become a director *after an interval of time.*

Mr. A is therefore not relieved from the statutory obligation to—

(1) Sign the prospectus or statement in lieu of prospectus. (Sec. 34.)
(2) Sign and file a consent to act as a director. (Sec. 140.)
(3) Sign the memorandum or sign and file a contract to take and pay for his qualification shares. (Sec. 140.)

UNDERWRITING—A CONCRETE EXAMPLE

38. *A company offers for subscription 100,000 shares of £1 each. A underwrites 60,000 shares, B 30,000, and C 10,000 for a commission at the rate of 2½ per cent on the*

amount underwritten. Firm subscriptions of an underwriter are to go primarily in relief of his liability. B takes firm 15,000 out of his 30,000 shares. The public subscribe for only 40,000 shares. Apportion the underwriting liability and show the amount of commission payable to each. (C.I.S. Final.)

Total issue of shares		100,000
Public subscription	40,000	
Taken firm by B	15,000	55,000
Balance to be taken by underwriters		45,000

	Shares Underwritten.	Shares taken firm.	Liability.	Proportion.	Net Liability of U/writers.
A	60,000	.....	60,000	$\frac{60}{85}$ of 45,000	31,765
B	30,000	15,000	15,000	$\frac{15}{85}$ of 45,000	7,941
C	10,000	.....	10,000	$\frac{10}{85}$ of 45,000	5,294
	100,000	15,000	85,000		45,000

Commission payable

			£	s.	d.
A	2½% on £60,000 =		1,500	–	–
B	2½% „ 30,000 =		750	–	–
C	2½% „ 10,000 =		250	–	–
			£2,500	–	–

ALTERNATIVE ANSWER—

Total issue of shares	100,000
Public subscription.	40,000
Underwriters' liability	60,000

	Shares Underwritten.	Proportion.	Liability.	Taken Firm.	Net Liability.
A	60,000	$\frac{6}{10}$ of 60,000	36,000	.....	36,000
B	30,000	$\frac{3}{10}$ of 60,000	18,000	15,000	3,000
C	10,000	$\frac{1}{10}$ of 60,000	6,000	.....	6,000
	100,000		60,000	15,000	45,000

The two methods of solving this underwriting question shown above are both adopted in practice, but the method of determining each underwriter's liability will depend upon the exact wording of the underwriting contract. In this example, the question states that "firm subscriptions" are to go *primarily* in relief of the subscribing underwriter's liability; hence it would appear that the second method is what the examiner required.

COMMENCEMENT OF BUSINESS

39. *When is a new company entitled to commence business?* (C.I.S. Inter.)

40. *What formalities must be complied with before a company incorporated under the Companies Acts may commence business or exercise its borrowing powers?* (C.I.S. Final.)

Private companies are entitled to commence business immediately the registration of the company is effected, i.e. when the certificate of incorporation is issued by the Registrar of Companies.

Public companies, however, cannot do so until the certificate entitling them to commence business is issued. To obtain this certificate, all the requirements of the Companies Acts incidental to incorporation must be complied with and the company must—

1. File a prospectus or statement in lieu thereof.
2. Allot shares, subject to the payment thereof in full in cash, to an amount not less than the minimum subscription (except where statement in lieu is filed, when a minimum subscription is not necessary).
3. Have received payment of the application and allotment moneys from the directors on their qualification shares.
4. File a Statutory Declaration with the Registrar that these conditions have been complied with.

When this declaration has been filed, the Registrar issues the certificate. Any contracts entered into by the company prior to the issue of this certificate are provisional only, but become legally binding immediately the certificate is issued.

Shares and debentures may be simultaneously offered for subscription and duly allotted to the public. Application and allotment moneys may be received on debentures as well as on shares, but no disbursements therefrom can take place until the certificate entitling the company to commence business has been obtained and exhibited to the company's bankers. (See Sec. 94.)

THE STATUTORY REPORT

41. *What is meant by the Statutory Report? What are its contents, and what formalities must be complied with in it?* (C.I.S. Inter.)

The Statutory Report is the report which, by the provisions of Section 113 of the 1929 Act, must be forwarded to every member of a public company at least seven days before the date of the Statutory Meeting.

The report must state, *inter alia*, full particulars of the shares allotted (showing separately the details of shares allotted as fully or partly paid for a consideration other than cash, and the nature of the consideration); the total amount of the cash received in respect of the shares; a summary of the company's receipts and expenditure; the balance of cash in hand; particulars of the preliminary expenses, the names and addresses of directors or managers, secretary, and auditors; and particulars of any contract, the modification of which the members will be asked to approve.

This report must be certified by two directors; and as regards shares allotted, cash receipts and expenditure on capital account, be certified as correct by the auditors (if any) of the company.

STATUTORY MEETING

42. *What matters must be attended to by the secretary in connection with the holding of the Statutory Meeting of a public company? Draft the agenda.* (C.I.S. Inter.)

43. *When must the first general or Statutory Meeting of companies under the Companies Act, 1929, be held? Draft the agenda for a Statutory Meeting.*

The Statutory Meeting is the first general meeting of the members of a public company limited by shares and of guarantee companies possessing a share capital, and must be held not less than one month nor more than three months from the date at which the company is entitled to commence business. (See Sec. 113 of the 1929 Act.)

The secretary's duties may be thus summarized—

1. Prepare and submit the draft Statutory Report to the directors for their approval.

2. Obtain the certification of the report by the company's auditors and its signature by two directors.

3. At least seven days before the date of the meeting,

forward a copy of the report to every shareholder. (See Sec. 113.)

4. File a copy of the Statutory Report with the Registrar of Companies immediately after copies have been dispatched to members.

5. Prepare (and produce at the meeting) a complete list of the names, addresses, and descriptions of the members of the company and the number of shares held by them respectively.

6. Record in the General Meetings Minute Book the minutes of the proceedings at the Statutory Meeting.

AGENDA

(1) Read the notice convening the meeting and the Statutory Report, unless taken as read.

(2) Chairman to explain that the meeting has been convened pursuant to Section 113 of the Companies Act, 1929.

(3) Chairman to explain the general position of the company and to reply to any questions arising out of the Report or relating to the formation of the company.

[*Note.* Whilst the Statutory Meeting is a General Meeting, it is not an Ordinary General Meeting within the terms of Section 112; and, therefore, the Annual Return is not required to be filed after the Statutory Meeting.]

THE OBJECTS OF THE STATUTORY MEETING

44. *Comment upon the purpose of the Statutory Meeting of a limited company. Can such a meeting be adjourned, and, if so, how and for what object?* (C.I.S. Inter.)

The object of the statutory meeting is—

1. To provide the shareholders with information as to the incorporation of the company, the allotment of shares, etc.;

2. To enable the shareholders to discuss these and any other matters arising therefrom; and

3. To approve the modification of the terms of any contract named in the prospectus.

No resolution can be passed at the statutory meeting unless notice has previously been given in accordance with the company's articles.

With regard to the adjournment, articles of association usually provide that "the chairman, with the consent of the meeting, may adjourn, etc."; but there is statutory provision in Section 113, Sub-section 8, that "the (statutory)

meeting may adjourn from time to time," and the power to adjourn therefore appears to be vested in a majority of the members at the meeting.

The object of the adjournment may be to provide members with additional information as to the company's affairs, but more usually it is to enable notice to be given (in accordance with the articles) of resolutions that will be submitted at the adjourned meeting.

THE COMPANY'S SEAL

45. *State the requirements of Table A as to the use of the seal of a limited company. When must the seal be used and when may it be dispensed with?* (C.I.S. Final.)

Table A provides that a resolution of the board of directors is required to authorize the company's seal to be affixed to any document. The seal must be affixed in the presence of two directors and the secretary (or other person appointed in the secretary's stead), who must sign every such document.

The seal must be affixed to all contracts, which, when made by English law, are required to be under seal, e.g. Deeds, Conveyances, Mortgage Debentures, etc. Under the provisions of the 1929 Act, the seal must also be affixed to—

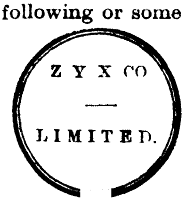
(*a*) Share or Stock Certificates. (Sec. 68.)
(*b*) Share Warrants to bearer. (Sec. 70.)
(*c*) Proxy Forms where the appointer is a company. (Table A, Clause 59.)
(*d*) Powers of Attorney appointing an agent to execute deeds abroad. (Sec. 31.)
(*e*) Instrument in writing, appointing an agent abroad to use an official seal on behalf of the company. (Sec. 32.)

Obviously, the seal is not required in parol contracts, and it may be dispensed with in those contracts which are required to be in writing but, by law, need not be under seal.

[The sealing and signatures usually appear in the following or some similar form]—

The common seal of the Z Y X Co., Ltd., was, by resolution of the board of directors, hereto affixed in the presence of:

..................................*Director.*
..................................*Director.*
..................................*Secretary.*



THE COMPANY'S CONTRACTS

46. *How may contracts on behalf of a company be made?*

47. *What contracts are required to be under the seal of a company which is incorporated under the Companies Acts?* (C.I.S. Final.)

By the provisions of Section 29 of the 1929 Act, valid and binding contracts may be made on behalf of a company in the same manner as similar contracts are required by law to be made between private persons, viz.—

1. Contracts required by law to be in writing and, if made by English law, to be under seal, may be made on the company's behalf in writing under the common seal of the company.

2. Contracts required by law to be in writing and signed by the parties to be charged therewith may be made on the company's behalf, in writing, signed by any person acting under its authority, express or implied.

3. Contracts which would, by law, be valid when made by parol and not reduced to writing, may be made in that manner on the company's behalf by any person acting under its authority, express or implied.

All such contracts may be varied or discharged in the same manner in which they were made.

The execution of deeds abroad by an agent on the company's behalf must be authorized by a Power of Attorney issued by the company under its common seal appointing the agent as its attorney (See Sec. 31.)

CHAPTER IV

SHARE CAPITAL

COMPANIES having a share capital are required, by Section 2 of the Companies Act, 1929, to state in the memorandum of association the amount of the share capital and the division thereof into shares of a fixed amount. The manner in which this requirement is complied with varies widely with different companies, more especially where the capital is divided into different classes—Preference, Ordinary, Deferred, etc.—and various rights and privileges are attached to each class.

These rights and privileges of different classes of shares may be defined in either the memorandum or the articles of association; but where the memorandum defines those rights, they cannot be subsequently altered unless the memorandum also confers power to vary them, or the alteration is in pursuance of statutory authority. When the rights of respective classes are defined by the articles, alterations may be effected by means of a Special Resolution or, in some instances, where the articles so authorize, by an Extraordinary Resolution. (See Cl. 3 of Table A.)

A convenient method, by which the widest possible powers are conferred upon the company, is to phrase the capital clause in the following or similar manner—

> The capital of the company is Fifty thousand pounds, divided into Fifty thousand shares of One Pound each, with power to increase such capital and with power from time to time to issue any shares of the original or the new capital with any preferential or deferred rights or privileges as may be determined by a special resolution of the company.

The provisions of the 1929 Act relating more particularly to share capital and its adjustment are Sections 48 to 61. Section 153, however, which provides statutory authority for the reorganization of share capital is dealt with in Chapter XIX on "Reconstruction and Reorganization."

DEFINITION OF CAPITAL

48. *What is meant by the Capital of a limited company? Indicate briefly two ways in which capital can be reduced.* (C.I.S. Inter.)

4—(B.1902)

The capital of a company may be defined variously as—

1. The amount with which a company is registered and which is authorized by the memorandum, and alternatively described as "Registered," "Authorized" or "Nominal Capital."

2. The amount actually issued and allotted to members, known as "Issued" or "Subscribed Capital."

3. The amount subscribed and paid up (either in cash or other consideration) by the members, usually termed "Paid-up Capital."

4. The amount unissued, generally termed "Uncalled Capital."

5. The amount which is only callable in the event of the company being wound up, known as "Reserve Capital." (See Sec. 49.)

Again, where the capital is divided into classes, each class will be distinctively named, e.g. Preference, Cumulative Preference, Participating Preference, Ordinary, etc.; and the exact rights of each class will be determined by the memorandum and/or the articles of association.

Two different ways in which capital may be reduced are—

(*a*) By the cancellation of uncalled capital.

(*b*) By the cancellation of paid-up capital which is lost or not represented by available assets.

The former is merely a matter of an ordinary resolution where Table A applies (see Section 50 (1) (*c*) and Table A, Cl. 37), but the latter is a serious matter requiring a special resolution and sanction of the Court (Section 55 (1) (*b*)).

STOCK, SHARES, AND DEBENTURES

49. *Define (1) Share Capital; (2) Shares;* and *(3) Debentures and contrast Shares with Debentures.* (C.I.S. Inter.)

50. *Compare the following: Shares with Debentures; Fixed Capital with Circulating Capital; Preference Shares with Ordinary Shares; Stock with Shares.* (C.I.S. Inter.)

Share capital is defined in the preceding question.

Shares are the proportions of capital contributed by the members individually, represent the interest of a shareholder in the company, and confer rights, duties, and obligations on the shareholder. Debentures are instruments creating or acknowledging a debt owing by the company. Shares confer the right to dividends payable out of the company's profits;

whilst debentures carry the right to interest at an agreed rate per cent, such interest being payable whether the company earns profits or not.

Preference shares (as their name implies) carry a preference or priority over the ordinary shares. The preference may consist of (1) a priority as regards dividends only; (2) priority in a return of capital in a winding up only; or (3) priority as to both dividends and capital. Preference shares usually have a fixed rate of dividend to which they are entitled, but the ordinary shares may receive dividends to the fullest extent that the profits will allow. Redeemable preference shares may be issued in accordance with Section 46 if the articles authorize.

Fixed Capital is the capital which is represented by permanent assets, e.g. Land and Building, Machinery, etc.; whilst Circulating Capital is the capital represented by assets which are constantly changing both in nature and in amount, e.g. Stock-in-Trade and Book Debts.

Shares and Stock both represent the interest of a shareholder or stockholder in a company, but shares have distinctive numbers allotted to them and need not be fully paid, whilst stock must be fully paid and does not possess distinctive numbers.

ALTERATIONS OF CAPITAL, ETC.

51. *Outline the procedure for: (1) Increase of capital; (2) Reduction of capital; (3) Alteration of Articles of Association.* (C.I.S. Inter.)

52. *Explain precisely the procedure necessary:* (a) *in reducing a company's capital;* (b) *in subdividing a company's shares.* (C.I.S. Final.)

Section 50 of the Companies Act, 1929, provides that any alterations of capital, whether by increase, consolidation, subdivision of shares or otherwise, must be authorized by a company's articles of association, and if the articles do not sanction any such alteration, the articles must be altered by special resolution before any alteration of capital can be effected.

(1) The procedure for an increase of capital is governed by the articles, and the increase must be effected by the company in general meeting. The requisite meeting must be duly called and the appropriate resolution (ordinary, extraordinary or special, as provided by the articles) passed. Notice of the increase of capital must be given to the Registrar of

Companies on the prescribed form within fifteen days of the passing of the resolution and the duty on such increase paid. The notice must give particulars of the classes of shares affected and the conditions subject to which the new shares have been or are to be issued. Particulars of the increased capital must be inserted in every copy of the memorandum of association subsequently issued by the company.

(2) and (*a*). Section 55 of the Companies Act, 1929, which specifies the procedure for reduction of capital, provides that a company "may by special resolution reduce its capital in any way," subject to confirmation by the Court. After the special resolution has been passed by the company, a petition must be presented to the Court for an order confirming the reduction. The petition must be supported by affidavits of the directors narrating the company's history and the circumstances which have led up to the present position; the company's auditors usually deal with the figures as disclosed in the accounts, whilst the secretary deposes as to the convening of the meeting and the passing of the resolution. The company is occasionally required to add the words "and reduced" to its name for such period as the Court may fix (Sec. 57). Where the reduction involves the extinction or reduction of the liability on unpaid capital, the position of creditors may be adversely affected, and they have the right to object. The Court will require to be satisfied that the debts of dissenting creditors are adequately provided for. Where, however, paid-up capital is lost or unrepresented by available assets, creditors are not affected and have no *locus standi*.

An office copy of the Court's order, accompanied by a minute (approved by the Court) setting out the detailed particulars of the company's amended share capital, must be filed with the Registrar of Companies. The Registrar issues a certificate of the registration of the Court's order and the minute. A copy of the minute must be included with every copy of the memorandum subsequently issued.

(*b*) Section 50, Sub-section 1 (*d*) of the 1929 Act provides for the subdivision of a company's shares. The shares may be subdivided into shares of smaller amounts, but where the shares are partly paid, the proportion between the amounts paid and unpaid on each of the new shares must be the same as on the original shares.

(3) Alterations of articles of association are effected by a special resolution. (See Sec. 10, also Ques. No. 32.)

(1), (2), (3), (*a*) and (*b*). The notices convening the meetings must specify the nature of the business to be transacted thereat, e.g. "Increase of the company's share capital," "Alteration of capital by subdivision of shares," etc. It is customary for the notices to append the exact wording of the resolutions and for an accompanying circular to explain the necessity for and the objects to be attained by the proposed alterations.

CONSOLIDATION OF SHARE CAPITAL AND CONVERSION OF SHARES INTO STOCK

53. *How and in what circumstances can the capital of a company be* (a) *consolidated and* (b) *converted into stock?* (C.I.S. Inter.)

The statutory authority for the consolidation and division of all or any of a company's share capital into shares of larger amount than its existing shares is provided by Sub-section 1 (*b*) of Section 50 of the 1929 Act. The powers conferred by this section must be exercised by the company in general meeting, and the procedure outlined in the articles must be followed. Notice must be given to the Registrar of Companies in the prescribed form, and every copy of the Memorandum subsequently issued must contain particulars of the consolidation.

The conversion of shares into stock can only be effected when the shares are fully paid, and the articles authorize and outline the procedure for the conversion. Stock is never issued direct; shares are first issued and, when fully paid, may be converted into stock. Where the articles are silent on the matter, it is not necessary to make special articles before the resolution for the conversion is passed. A special resolution passed in the usual way will suffice. Table A provides that the directors may, with the sanction of the company in general meeting, convert paid-up shares into stock or reconvert stock into paid-up shares. Notice of the conversion of the shares into stock or *vice versa* must be given to the Registrar. The Register of Members will show the amount of stock held, instead of the number and nominal value of shares. Any copies of the memorandum subsequently issued will need to have the Capital clause revised to correspond with the alteration

[*Note.* For Statutory Companies, compare the provisions of Section 61 of the 1845 Act for the conversion or consolidation of shares into stock.]

RETURN OF CAPITAL

54. *A shipping company with £100,000 capital, issued and fully paid, sells its ships at a profit. The directors propose to return 19s. per share, but reserve the right to call up the amount again if deemed expedient. Is this competent?* (C.I.S. Final.)

Not unless the shares are redeemable preference shares. The more correct method appears to be for the company to proceed under Section 55, Sub-section 1 (*c*), and by special resolution, sanctioned by the Court, pay off the paid-up share capital which is in excess of the wants of the company, without extinguishing or reducing liability on its shares.

It is assumed that the company possesses other capital assets with which it can continue trading and earn profits. If the ships disposed of comprise the whole of the assets, shareholders may be able to petition the courts for a winding-up order on the ground that it is just and equitable to wind up the company because the substratum of its business is gone.

It should be noted that if so authorized by its articles, a company may issue preference shares which are, or at the option of the company are to be liable, to be redeemed out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption. (See Sec. 46.)

CREDITORS' OPPOSITION TO REDUCTION OF CAPITAL

55. *To what extent and upon what grounds may a resolution to reduce capital be opposed by a creditor or creditors?* (C.I.S. Inter.)

Under the provisions of Section 56 of the 1929 Act, the Court is empowered to fix the list of creditors who are entitled to object, and the company must either—

(1) Obtain the consent of the creditors to the reduction; or

(2) Discharge the creditors' debt or give security for its payment.

Where the debt or claim is in dispute, the company must

provide either for payment in full or for such an amount as may be fixed by the Court.

The Court must be satisfied that every creditor has either consented to the reduction, or that his debt has been discharged or has determined or been secured, before confirmation of the reduction of capital can be granted.

Where an application has been made to the Court for the confirmation of a reduction of share capital which involves either the diminution of any liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, the Court may direct that the above-noted provisions shall not, as regards any class or any classes of creditors, apply in relation to the reduction to which the application relates, and, where the Court so directs, the consent of the creditors of that class or those classes to the reduction shall not be required.

REDUCTION OF CAPITAL: A CONCRETE EXAMPLE

56. *A trading company is registered in 1919 with £100,000 of Share Capital, divided into 10,000 seven per cent Preference and 90,000 Ordinary £1 Shares, all issued and fully paid up. In 1920, half the capital is lost, no dividends are paid, and the directors desire to reduce the capital to £50,000. How would such a reduction be effected?* (C.I.S. Final.)

The procedure for a reduction of capital is outlined in Question Nos. 51 and 52, hence this "answer" shows how the different classes of capital are affected. The information given above does not state how far the preference shares have a priority over the ordinary shares, and this factor may affect the manner in which the reduction is effected.

If the preference shareholders have a priority for dividends only, it would appear that in a reduction of capital they must share equally with the ordinary shareholders, and the revised capital would be—

10,000 Preference Shares of 10s. each	= £5,000	
90,000 Ordinary Shares of 10s. each	= 45,000	
		£50,000

Where the preference shareholders have a priority for the return of capital, it would appear equitable that the greater part of the loss should fall upon the ordinary shareholders. In that event, the revised capital may appear as follows—

10,000 Preference Shares of 16s. each	= £8,000	
90,000 Ordinary Shares of 9s. 4d. each	= 42,000	
		£50,000

or some similar scheme. Alternatively, the loss may fall entirely on the ordinary shares, leaving the preference shares intact.

Any scheme of reduction that may be submitted to the Courts must be fair and equitable where it affects the rights of different classes of shareholders, and must have been approved by the shareholders at separate class meetings.

ISSUE OF BONUS SHARES

57. *Suppose the company described in the previous question made a profit of £100,000 instead of a loss; the directors placed £50,000 to reserve, and in 1925 decided to distribute the reserve amongst the members in the form of bonus shares, would the preference shareholders be entitled to participate?* (C.I.S. Final.)

Whether the preference shareholders will be entitled to participate in the proposed issue of bonus shares depends upon the precise rights of the shareholders as defined by the memorandum and articles of association, and also whether the preference shares are excluded from participation in the distribution of surplus assets. If the preference shares are so excluded, they would not be entitled to participate in the issue of bonus shares.

Where the articles provide for participation in the distribution of surplus assets, the preference shares will participate in the issue of bonus shares in the ratio laid down in the articles.

In *Fraser* v. *Chalmers, 1919*, there were surplus assets (after the payment of arrears of dividend on the cumulative preference shares, and the repayment of the capital on both ordinary and preference shares) amounting to £150,000.

The special resolutions creating the preference shares provided that on a winding up the assets were to be applied, first, in repayment to the preference shareholders of the amounts paid up on their shares and arrears of dividend (if any), and next in repayment of the amounts paid up on the ordinary shares, but no provision was made as to the distribution of any assets remaining after these payments were provided for; it was held that the surplus assets must be distributed rateably between the preference and the ordinary shareholders.

Clearly, a distribution of bonus shares is equivalent to a distribution of surplus assets and, on the principle enunciated in *Fraser* v. *Chalmers*, it would appear that the preference and ordinary shareholders should share rateably in the issue of bonus shares where the articles are silent as to the distribution of surplus assets.

THE REVISION OF PREFERENCE SHARE CAPITAL

58. *The memorandum of a limited company states that the Share Capital is divided into 10,000 preference and 10,000 ordinary shares, the former having cumulative rights to a 6 per cent dividend and priority over capital. Only 5,000 ordinary shares are subscribed, and the directors propose to issue the balance as 10 per cent preference shares ranking* pari passu *with the 6 per cent preference shares already issued.* Quid juris? (C.I.S. Final.)

The revision of share capital indicated in this question may be effected under the provisions of Section 153 of the 1929 Act. As the rights of both the existing preference and the ordinary shareholders are being interfered with, viz.—

(1) The preference shareholders by the creation of additional preference shares with a higher dividend to rank *pari passu*;

(2) The ordinary shareholders by the creation of additional preference shares to rank in priority to the ordinary shares;

it will be necessary to convene separate meetings of each class of shareholders and to pass a resolution approving the alteration by a majority of the shareholders holding at least three-fourths in value of the capital of each class. A combined

meeting of the whole of the members of the company must also be held. The sanction of the Court must then be obtained by petition, and subsequently, an office copy of the Court's order, accompanied by printed copies of the resolutions, must be filed with the Registrar of Companies.

REDUCTION OF DIVIDEND ON PREFERENCE SHARE CAPITAL

59. *The issued capital of a company consists of 5,000 five per cent cumulative preference shares of £1 each and 5,000 ordinary shares of £1 each. It is desired to reduce the dividend to 4½ per cent. Can this be done ?* (C.I.S. Final.)

The possibility of the reduction of dividend will depend entirely upon the provisions of the memorandum and articles of association under which the preference shares were created.

Where the rights of the preference shareholders are defined by the memorandum, those rights are unalterable (*Ashbury v. Watson, 1885*); unless the memorandum itself authorizes alterations (*Welsbach Incandescent Co., 1904*).

If, however, the capital clause of the memorandum simply states that—

> "The capital of the company is Ten thousand pounds divided into ten thousand shares of one Pound each";

the division of the capital into classes and the respective shareholders' rights being defined by the articles of association, it may be possible to reduce the dividend by passing a Special Resolution altering the article which confers the dividend rights. Alternatively, the articles may contain a clause authorizing the variation or modification of the shareholders' rights by means of an Extraordinary or Special Resolution.

Clause 3 of Table A provides that the rights of shareholders of different classes may be modified with the consent in writing of holders of three-fourths of the issued shares of that class or, alternatively, with the sanction of an Extraordinary Resolution passed at a separate meeting of the class affected.

The quorum for the Extraordinary General Meeting in this

case shall be two persons holding or representing by proxy at least one-third of the issued shares of that class. The holders of not less than 15 per cent of the issued shares of that class may apply to the Court to have the variation cancelled, and in such a case the variation will not have effect until confirmed by the Court.

ISSUE OF CAPITAL AT A DISCOUNT

60. *The directors of a limited company resolve to issue certain shares to existing members at a discount of* 8 *per cent. Comment on this.*

Power to issue at a discount shares of a class already issued is conferred on the company subject to the following conditions—

(*a*) The issue of the shares at a discount must be authorized by resolution passed in general meeting of the company, and must be sanctioned by the Court;

(*b*) The resolution must specify the rate of discount (in this case, 8 per cent) at which the shares are to be issued;

(*c*) Not less than one year must at the date of the issue have elapsed since the date on which the company was entitled to commence business;

(*d*) The shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

Every prospectus relating to the issue of shares and every balance sheet issued by the company subsequently to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the document in question. Particulars must also be included in the annual return—see Section 108.

The power to issue shares at a discount was an innovation introduced by the Companies Act, 1928; but it was one of the sections of that Act which did not come immediately into force. It was included in the 1929 Act—see Section 47.

FREE ISSUE OF FULLY-PAID SHARES

61. *A limited company intends to increase its capital and make a free issue of fully-paid shares to its existing members. Is this competent under any circumstances?* (C.I.S. Final.)

A company may make a free issue of fully-paid shares *pro rata* to its members in the following circumstances, after having increased its capital to the requisite amount.

1. That a Reserve Fund of an amount equivalent to the total of the proposed free issue exists; and
2. That the articles authorize the distribution of the Reserve Fund, or, alternatively, special resolutions are passed authorizing its distribution.

The methods adopted may vary in different circumstances.

One method is to distribute the Reserve Fund, by way of "dividend" or "bonus, free of income tax," and make a new issue of capital simultaneously. Forms of Application or Acceptance for the new shares are issued, and shareholders are asked to subscribe for the new shares with the proceeds of the dividend or bonus.

Alternatively, a special resolution may be passed, authorizing the declaration of a dividend, free of income tax, payable out of accumulated profits standing at the credit of reserve fund, so that each member becomes a creditor of the company. The resolution must further provide for the satisfaction of the debt owing by the company to the shareholder by the issue of fully-paid shares. In this instance, where shareholders do not have the option of accepting a "cash" dividend and thus pay for the new shares in "cash," it will be necessary for the company to file with the Registrar a contract constituting the title of the allottee to the shares, so as to comply with the provisions of Section 42 of the 1929 Act.

Another method which may be adopted is to pass special resolutions—

(*a*) Declaring the advisability of capitalizing a given amount at the credit of reserve fund;

(*b*) Authorizing the directors to declare a bonus, free of income tax, to the amount named payable in fully-paid shares of the company;

(*c*) Authorizing the directors to issue and allot the shares to the members *pro rata* to their holdings.

In this instance, also, a contract must be filed to comply with the provisions of Section 42. Usually, the contract is made between the company of the one part and a shareholder (on behalf of himself and all the other shareholders) of the

other part. This contract should be approved by means of a special resolution or, alternatively, the special resolution should confer authority upon the directors to appoint a person to sign such contract on behalf of the persons entitled to the dividend or bonus.

Whichever method is adopted, where the new issue involves fractions of shares, arrangements must be made to adjust the rights of members either by the issue of fractional certificates or otherwise.

CHAPTER V

SHARES AND SHAREHOLDERS

IN this chapter is collected a series of questions dealing with the issue and allotment of shares, and the rights, duties and responsibilities of shareholders. The relative sections of the Companies Act, 1929, which should be studied in connection with these questions are—

Sections 25, 62, 68 relating to shares and membership; and
Sections 34–45 relating to prospectus, allotment, etc.

Many other sections of the Act contain provisions affecting shareholders, and these are separately dealt with in the appropriate chapters of this volume.

Where the questions are applicable to statutory companies, a foot-note is appended quoting the corresponding section of the 1845 Act.

MEMBERSHIP OF A COMPANY

62. *What is meant by membership of a company? How can a person become a member?* (C.I.S. Inter.)

"Membership of a company" indicates that a person has become a member of the company and is registered in the company's books as a holder of some portion of the Stock or Share Capital. Section 25 of the 1929 Act provides that the signatories to the memorandum are deemed to have agreed to become members and, when the registration of the company is effected, must be put on the Register of Members. The section further provides that every other person who has agreed to become a member, and whose name is entered on the Register of Members, shall be a member of the company.

Membership may be acquired in one or more of the following methods—

1. As signatory to the memorandum.
2. By application for and allotment of shares.
3. By purchase and transfer of shares, the transfer being subsequently approved and registered.
4. By transmission through death, lunacy or bankruptcy of a member.
5. By estoppel.

6. By acting as a director, whereupon he is deemed to have agreed to take up qualification shares. (Sec. 140.)

7. By surrender of a share warrant to bearer. (Sec. 97.)

8. By allowing name to remain on the Register of Members.

Executors or administrators of deceased members may become members by signing a "Letter of Request," when they become personally responsible for future calls on partly-paid shares with a right of recovery against the deceased's estate. Beneficiaries under a will accepting shares become members by signing a transfer, the executors acting as transferors. (But see page 70, first paragraph.)

Trustees in Bankruptcy or a Committee in Lunacy are members in a representative capacity only, and derive their authority from the Order of the Court. Most articles, however, authorize Trustees in Bankruptcy to be registered as a member in respect of the bankrupt's shares.

ESTOPPEL. A member who has disposed of his shares, yet knowingly allows his name to remain on the register, is "estopped" from denying that he is a member and is responsible for the liabilities of membership. Similarly, a person who holds himself out to be a member may also incur liabilities.

[*Note.* For Statutory Companies, compare Sec. 8 of the 1845 Act.]

DISTINCTIVE NUMBERS OF SHARES

63. *What are the principal uses and advantages of distinctive share numbers? Is their use obligatory?* (C.I.S. Inter.)

The principal use and advantage of distinctive share numbers is the facility they afford of tracing the ownership of any particular share or shares. Again, where there has been a new issue of shares which are only partly paid, whilst the original issue is fully paid, the new issue will bear correspondingly higher numbers and can easily be distinguished by its distinctive numbers.

Section 62 of the 1929 Act provides that "each share in a company having a share capital shall be distinguished by its appropriate number."

SHARE CERTIFICATES

64. *Define a Share Certificate. When must such certificates be issued to allottees and transferees, and what is the remedy of a shareholder whose certificate has been lost or destroyed?* (C.I.S. Inter.)

65. *Explain the nature and effect of a Share Certificate.* (C.I.S. Inter.)

A Share Certificate, issued under the seal of a company, is a document of title, certifying that the person named is the registered holder of the shares therein specified, and that the amount stated to be paid on the shares has been paid. Section 68 of the 1929 Act provides that the share certificate shall be prima facie evidence of the member's title to the shares. It does not require to be stamped.

Share certificates must be issued to allottees and transferees within two months of the date of allotment or the date of lodgment of the transfer (Sec. 67); but Stock Exchange requires that share certificates shall be ready within one month of lodgment of transfer.

Statutory companies are required to deliver share certificates " on demand " to the holders of the shares. (Sec. 11 of the 1845 Act.)

[*Note.*—Lost Share Certificate is dealt with in Question No. 79.]

JOINT HOLDERS OF SHARES

66. *State shortly the clauses which you would insert in a company's Articles of Association regarding the joint holding of shares, and the effect of the absence of such clauses.* (C.I.S. Inter.)

The clauses to be inserted in the articles should include regulations providing—

1. That joint holders should be jointly and severally liable to pay all calls in respect of shares.

In the absence of the " joint and several " clause, the liability would be joint only and, in the latter event, judgment against one would release the other holders.

2. That the survivors or survivor (or the legal representatives of the last surviving holder) shall be the only persons recognized by the company as having any title to the shares.

This clause follows the recognized practice of joint holdings, viz., that the interests of deceased holders pass to the survivor. Joint holdings generally arise in the case of trusts; but the company takes no notice of trusts, and, by the operation of this clause, the surviving holders (or trustees) are empowered to deal with the shares upon proving the death of the deceased holder.

3. That only one certificate shall be issued for shares held jointly, and that delivery of the certificate to one holder shall be delivery to all.

4. That the vote of the senior of joint holders shall be accepted to the exclusion of other holders, seniority being determined by the order in which the names are entered in the register.

5. That, as regards dividends, any one of the joint holders can give effectual receipts for any dividend payable.

6. That, as regards notices, a notice may be given by the company to the joint holder named first in the register.

7. That in the case of the transfer of shares, the signature of the senior of joint holders be recognized as sufficient authority.

Clauses 3, 4, 5, and 6 simplify the detail work of the company by enabling it to deal with one holder only as regards dividends, notices, voting, and receipts. In the absence of these (or similar clauses), notices must be sent to all the joint holders, all of whom would be entitled to attend and vote (proportionately, on a poll) at meetings; dividends would be payable to the holders jointly and receipts would need to be signed by all the holders.

[*Note.* Compare the provisions of Cls. 4, 12, 20, 55, 94, and 105 of Table A. For Statutory Companies, compare Secs. 78 and 137 of the 1845 Act.]

PROSPECTUS—PRE-ISSUE CONDITIONS

67. *What conditions must be observed before a company prospectus is issued to the public? Explain the object of such conditions.* (C.I.S. Inter.)

The prospectus must be dated, and a copy thereof—signed by every director or proposed director named therein (or his agent authorized in writing)—delivered for registration to the Registrar of Companies, after which it may be issued. Every copy issued must be dated and bear a statement thereon that a copy has been delivered for registration to the Registrar.

Section 35 of the 1929 Act provides that the prospectus shall contain, *inter alia*, detailed information as to the directors, vendors, allotments of shares or debentures for a consideration other than cash, any previous issue of capital during the preceding two years, purchase price of property and the amount (if any) payable for goodwill, any material contracts, the nature and extent of the directors' interest in the promotion of the company or the property to be acquired, voting rights of shareholders, etc. The full list of matters to be contained in a prospectus appears in Schedule IV of Companies Act, 1929.

The object of these provisions is for the protection of intending subscribers by—

1. Ensuring that a copy of the prospectus shall always be available for inspection by the public at the Companies Registration Department at Bush House.

2. Fixing the directors with personal liability for the statements contained in the prospectus by obtaining their signature to the prospectus.

3. Ensuring that the fullest information shall be given in the prospectus to enable the public to decide upon the advantages (or otherwise) of becoming shareholders in the company.

RESTRICTIONS ON ALLOTMENT

68. *Explain briefly the object and effect of the restrictions imposed by the Companies Act, 1929, upon the allotment of shares.*

The provisions of the 1929 Act dealing with the allotment of shares are contained in Sections 39–42, and the principal object of these provisions is to ensure—

(1) That the company should commence its career with sufficient working capital, i.e. by providing that it should not go to allotment unless the amount required to cover purchase price, preliminary expenses, and working capital has been subscribed, and a certain percentage of the share capital paid to and received by the company.

(2) (*a*) The protection of the subscribers by providing for the return of their subscriptions in the event of these conditions not being fulfilled; and (*b*) that the certificate entitling the company to commence business or exercise its borrowing powers shall not be issued until a statutory declaration has been filed with the Registrar of Companies declaring that the statutory conditions as to the minimum subscription, payment by directors in cash for their shares, etc., have been complied with.

With regard to (2*a*), the effect is to make the directors personally liable for the return of the subscriptions, whilst with (2*b*) the effect is to place the bankers and others who receive the application money in the position of trustees for the subscribers. Bankers will not release the application money to the use of the company until the "certificate entitling the company to commence business" has been obtained and produced for their inspection.

PAYMENT OF COMMISSION ON SHARES

69. *By what methods, if any, is it possible for a limited company validly to allot shares for less than their nominal value?* (C.I.S. Inter.)

70. *In what circumstances and subject to what conditions may a company pay a commission on shares?* (C.I.S. Inter.)

Companies may allot shares for less than their nominal value only as prescribed on page 49; but under the provisions of Section 43 of the 1929 Act, a company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe or procuring subscriptions for any of the shares of the company. It is essential, however, that the company's articles of association authorize the payment, and also state the rate per cent of such commission. The rate must not exceed 10 per cent of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less. Particulars of the commission must be disclosed in the prospectus of any shares offered to the public, in the statement in lieu of a prospectus for any shares not offered to the public and in any circular or notice (not being a prospectus) inviting subscriptions for the shares.

Companies have always been able to pay a reasonable brokerage to brokers and others who introduce subscribers, and Sub-section 3 of Section 43 provides statutory authority for such payment. It is customary to disclose the rate of payment for brokerage in any prospectus, etc.

Where commissions, etc., have been paid (or discounts in the case of debentures), the total amount paid or allowed must be stated in every balance sheet of the company until the whole has been written off. Commission allowed in respect of shares (and also debentures) must also be stated in the Annual Return. (Sec. 108.)

[*Note*. Statutory Companies are sometimes authorized to issue stock at less than the par value, but the authority must be conferred by the special Act of Parliament.]

IRREGULAR ALLOTMENT

71. *What is the position of a subscriber for shares on a public issue where the minimum subscription is not reached?* (C.I.S. Final.)

72. *What are the possible consequences of an irregular allotment of shares?* (C.I.S. Final.)

Section 39 of the 1929 Act provides that where a prospectus is filed and issued no shares are to be allotted until the minimum amount named has been subscribed, and the amount due on application has been paid to and received by the company. If the minimum subscription is not reached within forty days of the first issue of the prospectus, subscribers are entitled to have their application moneys returned to them in full within the next eight days. The directors are jointly and severally liable to repay the money with interest at 5 per cent per annum at the expiration of forty-eight days from the first issue of the prospectus.

Where shares are allotted irregularly without complying with the statutory requirements as to the minimum subscription, the subscriber, provided that he has not acted so as to "adopt the transaction," is entitled to have the allotment set aside within one month of the statutory meeting, even although the company is being wound up. Where no statutory meeting is necessary (as in the case of a private company), the period of one month starts from the date of the allotment. (See Sec. 41.)

Further, any director knowingly concurring, permitting, or authorizing the irregular allotment is liable to compensate the subscriber (and the company) for any loss sustained. Proceedings must, however, be taken within two years of the date of allotment.

RETURN OF ALLOTMENTS

73. *What are the duties of a company in regard to what is known as "a return as to allotments"?* (C.I.S. Inter.)

By the provisions of Section 42 of the Companies Act, 1929, all companies with a share capital must file with the Registrar of Companies a return giving the names, addresses, and descriptions of the allottees, with particulars of the shares allotted to each person and a summary stating the total number of shares allotted, their nominal amount, and the amount paid or due and payable on each share.

Where shares are allotted for a consideration other than cash, this must be shown on the return, and the amount to be treated as paid on each share must be stated. Further, a contract constituting the title of the allottee to the allotment, together with any contract of sale, or for services rendered, or other consideration in respect of the allotment, duly stamped, must also be filed.

Section 42, Sub-section 2, provides that if the contract for allotment of shares as fully or partly paid "is not reduced to writing," the company must file a statement containing particulars of the contract, and such statement must be duly stamped with the same stamp duty as if a written contract had been duly signed and sealed.

The return of allotments must be filed within one month from the date of allotment.

NEW ISSUE OF SHARES *PRO RATA* TO MEMBERS

74. *Describe, in detail, the Secretary's duties and office routine in connection with an offer of shares to existing shareholders* pro rata *to their holdings.* (C.I.S. Final.)

At a board meeting previously held, the terms of issue, date of issue, and closure of the offer will have been decided by the directors, and it will be essential for the Secretary to arrange the routine work accordingly. The first duty will be to prepare the circular to the shareholders announcing the reasons for, and the advantages and terms of, the new issue. The circular should contain particulars of the members' present holding and the proportion of the new issue to which they are entitled. It should also set out the arrangements for dealing with fractions of a share (whether by issue of fractional certificates or otherwise) and the date on which the offer will be closed to the shareholders. The circular should be accompanied by a form of application for the shares and a letter of renunciation printed on the back of the application form, thus enabling shareholders who do not wish to take up the new issue, to dispose of their rights.

During the time this circular is being printed, there will be compiled a list of the shareholders showing their present holdings and the proportion of the new issues to which they are entitled. A suitable form will be—

Serial No.	Led. Fol.	Name.	Address.	Present Holding Shares.	New Issue: *Pro Rata* Prop.		Renunciations.	Remarks.
					Shares.	Frac.		
						£ *s.* *d.*		

Each of the sheets will be numbered consecutively and separately totalled. A summary of the totals of each sheet will be made and placed in front of the whole set. The summary sheet totals must correspond with the totals of the company's issued capital and new issue.

If the offer is confined *entirely* to existing shareholders, the circular does not become a prospectus inviting the public to subscribe, and it is exempt from registration under Section 34 of the Companies Act, 1929; also the specific requirements of Section 35 as to the publication of certain particulars will not apply to the circular. (See Sub-sec. 5 of Sec. 35.)

Arrangements will have to be made with the company's bankers for the opening of a "New Share Issue Account," to which all moneys paid on application will be credited. This account will be closed, *after allotment*, by transference to the company's current account. The bankers are really in the position of trustees on behalf of the applicants until allotment takes place.

[It is customary to send written advice to the bankers, giving summarized particulars of the allotment, applications rejected, etc. With new companies, the banker will require to see the "Certificate entitling the Company to commence business"—issued by the Registrar of Companies—before the application or allotment money can be released.]

The Secretary will need to see that all the circulars, with accompanying forms, are posted to all shareholders. After this has been done, the list of applications and allotments will have to be prepared, allotment letters issued, returns of allotments made and filed; and, later on, the share certificates prepared and issued; and the new holdings entered on the Register of Members and Share Ledger.

CALLS ON SHARES

75. *Write a full note on the making of a call on shares.* (C.I.S. Final.)

Calls on shares must be made strictly in accordance with the provisions of the company's articles of association and in pursuance of a resolution of the board. The resolution should state the amount of the call, the date on which it is to be paid, and the place of payment.

Table A provides, *inter alia*, that—

1. No call shall exceed one-fourth of the nominal amount of the share.

2. One month's interval must elapse between any two calls.

3. Fourteen days' notice shall be given to the shareholders specifying time or times of payment.

4. For the payment of interest on overdue calls.

Special articles may vary these provisions, more particularly in the length of notice and the rate of interest chargeable on overdue calls. The Call Letter should contain a statement that the call is made by resolution of the Board, dated........................19...., give particulars of the amount payable by the shareholder, and state the date and place of payment.

Where, however, the prospectus provides for the payment of instalments on shares at specified dates, a formal resolution of the Board is not essential, and the Call Letter may be worded as follows—

In accordance with the terms of the prospectus dated...... .... 19.., the sum of Five shillings per share on the shares of this company becomes due for payment on 1st August, 19..

The amount payable by you on the 100 shares registered in your name is £25 : 0 : 0, which please pay to The Thames Bank, Limited, on or before the 1st August, 19..

Notice of the call must be given to every shareholder and served in manner provided for by the articles.

After a call has been made, transfers of shares should not be accepted for registration until the call has been paid. Calls are in the nature of specialty debts and, as such, are recoverable within twenty years. The estate of deceased shareholders is liable for payment of the calls; but where the shares have been personally accepted by the executors (or administrators) the latter will be responsible to the company.

It is customary for the articles to contain clauses authorizing the directors to forfeit shares for non-payment of calls and, after forfeiture, the shareholders may still be liable to pay the call, plus interest, if the regulations contain provisions to that effect.

Provided that the articles so authorize, the company may receive payment of calls in advance, and pay interest on such prepayment.

CALLS IN ARREAR AND CALLS IN ADVANCE

76. *(1) Draft a resolution making a call. (2) What steps should be taken to collect calls in arrear? (3) May*

interest be paid on calls in advance? (4) How does money paid in advance of calls rank in a winding up? (C.I.S. Inter.)

(1) That a call of five shillings (5s.) per share be made upon the partly-paid shares Nos. .... to . , such call to be payable on the 1st December, 19.., to the company's bankers, The English Bank, Ltd., Lombard Street, E.C.3; and that the call notices be issued on the 1st November, 19..., to the registered shareholders.

(2) Duplicate notices should be served on shareholders in arrear accompanied by letters requiring immediate payment. If the shareholder does not respond to the second application, a third notice should be sent intimating that legal proceedings will be taken to enforce payment if the call remains unpaid after a specified date. Alternatively, the shareholder may be reminded (where the articles so authorize) that the directors have power to forfeit the shares for non-payment of calls and that a notice of forfeiture will be served should he still persist in disregarding the call.

(3) Interest may be paid on "calls in advance," provided that the company's articles give authority for such payment, but not otherwise. Table A makes such provision.

(4) The position as regards money "paid in advance of calls" when the company is being wound up, depends entirely upon the solvency (or otherwise) of the company. Money so paid is not part of the company's share capital and is not allowed to rank for dividends whilst the company is a "going" concern, but it remains entitled to interest in the same way as debentures, whether profits are made or not. The shareholder is thus practically a creditor for such moneys, but he does not rank for payment until all trade and general creditors have been paid in full and provision made for the costs of "winding up." When there is a surplus as regards creditors, moneys paid for calls in advance will rank for repayment in priority to any return of capital to shareholders. Where, however, there is a deficiency as regards creditors and the liquidator makes a call on the contributories (shareholders) to meet such deficiency, the moneys paid in advance will rank as payment of such call and the shareholder will not be called upon for any further payment. If the amount of the call required to meet all debts and liabilities of the company is less than the "calls paid in advance," the surplus will be returned to the shareholder.

SHARE WARRANTS TO BEARER

77. *What is a Share Warrant to bearer and how do the holders obtain payment of dividends accruing in respect thereof? Indicate briefly the nature of the printed forms commonly used in connection with share warrants.* (C.I.S. Inter.)

A Share Warrant to bearer, issued by a public company under its seal and signed by the directors and secretary in the same manner as a share certificate, is a document of title to the shares named therein. It is a negotiable instrument, and as it possesses all the privileges and characteristics of negotiability, a *bona fide* holder for value obtains a perfect title.

The Share Warrant has a series of dividend coupons attached to it, and when a dividend has been declared by the company, the holder of the warrant must detach the relative coupon and present it at the prescribed office (usually, the company's bankers) for payment. It is customary for the company to advertise the forthcoming payment of dividends, and the announcement will state the date and place where the coupons have to be lodged to obtain payment of the dividend. The coupons (which have to be listed on a "coupon form," the holder receiving in exchange a "coupon ticket") are usually required to be left three clear days for examination, after which the holder can obtain the dividend cheque upon surrendering the coupon ticket.

Where coupons are not attached or issued, the share warrants have to be presented at the specified place of payment "for marking" and listed on a "Share Warrant Dividend Form." The warrants are then endorsed (Dividend No. .. paid) with a rubber stamp and returned by the company's officials, who also issue to the applicant a "Dividend Ticket," which is exchanged in due course for the dividend cheque. This method, however, is rarely adopted by British companies.

The printed forms most used in connection with share warrants to bearer are—

(1) Form of Application for the issue of share warrants.

(2) Form of Application for the cancellation of share warrants and re-registration as a shareholder.

(3) Lodgment Ticket issued by the company for (1) and (2) specifying the date when applicants are to call for the new documents.

(4) Form of Application to deposit Share Warrants with

the company to enable the holder to attend and vote at general meetings (if articles so provide—Sec. 97, sub-sec. 5).

(5) Certificate of Lodgment of Share Warrants.

(6) Coupon Form for listing and depositing coupons, so as to "claim" payment of dividends.

(7) Coupon Ticket specifying the date applicant is to call for dividend cheque.

THE CREATION OF SHARE WARRANTS

78. *How and when may Share Warrants be created by a limited company?* (C.I.S. Inter.)

Share Warrants to bearer may be issued by a public company when its articles of association authorize such issue and its shares are fully paid. (Sec. 70 of the 1929 Act.)

Private companies are unable to issue share warrants, as it would be inconsistent with the nature and status of a private company. (See Ques. No. 138.)

The regulations contained in the company's articles must be observed. Usually the shareholder is required to make a written application and surrender his share certificate for cancellation, receiving in exchange a share warrant for the equivalent number of shares.

Share Warrants are required to be stamped *ad valorem* at £3 per cent on the nominal value of the shares. This stamp duty is payable by the shareholder, together with the company's fee of 2s. 6d. for each warrant.

Share Warrants cannot form the share qualification for a directorship. (Sec. 141.)

LOST SHARE CERTIFICATE

79. *Describe the procedure as to issuing a Share Certificate in place of one lost.* (C.I.S. Inter.)

The usual method is to require the shareholder to deliver to the company—

(1) A Statutory Declaration, setting forth the true facts and narrating the circumstances, accompanied by—

(*a*) A fee of 1s. for the issue of a duplicate certificate; and

(*b*) A Letter of Indemnity, indemnifying the company against any claims, losses, or expenses that may be incurred either: (i) through the original certificate having been lost or mislaid; or (ii) by reason of the issue of a new certificate.

(2) The company may also require the Letter of Indemnity to be supported by a Banker's Guarantee or, alternatively, a Guarantee of Indemnity of a person of standing. This requirement is often waived in small accounts. (See Table A, Cl. 5.)

The new certificate should be marked "Duplicate," and an entry of its issue made in the Share Register. In the event of the shareholder disposing of his shares, it is essential to see that the duplicate certificate is lodged with the transfer. If the original certificate is lodged, inquiries must be instituted as to the reason therefor, and the duplicate certificate must be surrendered to the company before the transfer is passed for registration.

[*N.B.*—A similar procedure is adopted for lost Dividend Warrants, but the company's bankers must be advised and payment of original warrant stopped.]

FULLY-PAID SHARES ISSUED FOR CONSIDERATION OTHER THAN CASH

80. *What is the practice as to the issue of fully-paid Shares for a consideration other than cash?* (C.I.S. Final.)

80*a*. *State the requirements of the Act where shares are allotted by a company for a consideration other than cash.*

Shares may be issued as fully-paid in return for services rendered or in exchange for property or other assets transferred to the company. The board meeting at which the shares are allotted must be duly convened, a quorum present, and the facts as to allotment correctly recorded in the Minute Book.

A contract in writing constituting the title of the allottee to the allotment must be filed (duly stamped *ad valorem*, according to the nature of the consideration) with the Registrar of Companies within one month of the allotment. Where no written contract exists, the prescribed particulars of the contract must be filed with the Registrar, and the statement embodying these particulars must be stamped with the same stamp duty as if it were a contract in writing. (Sec. 42, Sub-sec. 1 (*b*) and 2.)

Summarized particulars of these shares must be included in the Return of Allotments and also in the Annual Return.

LETTERS OF RENUNCIATION

81. *What is a Letter of Renunciation? Describe in detail the practice of issuing Letters of Renunciation.* (C.I.S. Final.)

A Letter of Renunciation is a document issued to shareholders who do not wish to take up their proportion of a new issue of shares to which they are entitled. The shareholder "renounces" his rights by signing this letter and handing it to the person to whom he has sold or disposed of the right of applying for the shares. Letters of Renunciation require a sixpenny stamp when the nominal value is £5 and upwards; under £5, the stamp duty is one penny.

The practice with regard to "split letters" is to require the orignal Letter of Renunciation to be surrendered for cancellation and to issue new letters in the proportions desired by the shareholder.

Thus, if the original letter was, say, No. 21 for 200 shares, the shareholder may receive in its place two split letters, Nos. 501 and 502 each for 100 shares. A reference to the original letter, thus, "split from No. 21," will appear on the new letters for identification purposes, and the original entry (No. 21) in the New Issue Application Sheets will be cancelled and marked "split, see Nos. 501/502." The new entries on the list will also be marked "split from No. 21." No fees are chargeable for issuing the split Letters of Renunciation.

SURRENDER OF SHARES

82. *What do you know about the surrender of Shares?* (C.I.S. Final.)

83. *In what cases, if any, may a Limited Company acquire its own Shares?* (C.I.S. Inter.)

The legal dicta in *Bellerby* v. *Rowland & Marwood, 1902,* was—

> A company cannot be a shareholder in itself. Every surrender of shares, whether fully paid up or not, involves a reduction of capital, which is unlawful except when sanctioned by the Court. Forfeiture is a statutory exception, and is the only exception. For I regard a surrender, under circumstances which would justify a forfeiture, as merely equivalent to a forfeiture.

Thus, when the articles authorize a surrender of shares, and the shares are liable to forfeiture for non-payment of

calls, the formality of forfeiture is not necessary if the shareholder is willing to surrender his shares. Hence, it appears that valid surrenders, like forfeiture, can only apply to partly-paid shares. But surrender, like forfeiture, must not be in order merely to release the member from further liability.

Where the articles contain the needed authority, fully-paid old shares may be surrendered for new fully-paid shares of the same nominal value, but the old shares must be subject to re-issue. (*Rowell* v. *John Rowell & Sons, 1912.*) In this instance, the transaction resulted in an exchange of shares. Thus, the only instance in which a company can legally acquire its own shares (other than redeemable preference shares) is in the event of forfeiture for non-payment of calls.

Where a company has claims against promoters or others, surrenders of fully-paid shares may possibly be accepted as a compromise, but this would appear to require the sanction of the Courts. In all other instances, even if authorized by the articles, surrenders of shares act as a reduction of capital and must be sanctioned by the Court before the surrender can become legally effective.

THE RIGHTS OF PREFERENCE SHAREHOLDERS

84. *Explain the usual rights of Preference Shareholders. Subject to what conditions may such rights be cut down by the company?* (C.I.S. Inter.)

Preference Shareholders are usually entitled to a fixed cumulative preferential dividend, i.e. their dividend ranks as a first charge on the profits before any dividend is paid to the ordinary shareholders; and arrears of dividend, if any, are carried forward to the succeeding year. All preferential dividends are prima facie cumulative (*Webb* v. *Earle, 1875*); but where the memorandum and/or the articles provide that the fixed dividend on the preference shares is payable out of the net profits of *each* year, then such dividend is not cumulative (*Staples* v. *Eastman Co., 1896*).

A priority, in a winding up, as to the return of capital and arrears of dividend is also usually conferred, but they are, in most instances, excluded from participating in surplus assets.

Many companies exclude preference shareholders from attending at general meetings, unless their dividend is in

arrear. The prospectus would have stated the voting rights attaching to the shares. Formerly, it was a common practice to provide that preference shareholders had no right to receive balance sheets and reports; but all public companies incorporated since 1st July, 1908, are required to give preference shareholders the same right to receive and inspect balance sheets and reports as is possessed by ordinary shareholders. Section 130 further provides that in the case of private companies *any member* may have this privilege on payment of sixpence per hundred words.

The modification of the preference shareholders' rights will depend upon the provisions of the company's articles of association.

Table A (clause 3) states that where the share capital is divided into different classes, the rights attaching to any class (unless the terms of issue otherwise provide) may be varied with the consent in writing of three-fourths of the holders of the class affected, or with the sanction of an Extraordinary Resolution passed at a separate general meeting of the shareholders of that class.

Upon a reorganization of capital, where any preference or special privilege is being interfered with, a separate class meeting of the shareholders must be held, and the alterations must be sanctioned by a majority in number of shareholders of that class holding three-fourths of the share capital of that class, present and voting either in person or by proxy at the meeting.

CHAPTER VI

TRANSFER AND TRANSMISSION OF SHARES

THE detail work in connection with the Transfer and Transmission of Shares comprises some of the most important of secretarial duties, and the greatest care and exactness is needed in its execution. In large companies, a separate department is established, dealing exclusively with this work, under the charge of an official known as the Registrar. With smaller companies, the work is dealt with by the secretary.

Section 62 of the 1929 Act declares that " the shares . . . shall be personal estate transferable in manner provided by the articles of the company," whilst Section 65 provides for the statutory recognition of the transferees' rights and Section 64 for the validity of transfers by the personal representative of a deceased member. All companies registered under the 1929 Act are at liberty to make their own regulations for these transactions. Where Table A is adopted, the regulations applicable are contained in Clauses 17 to 22. Statutory companies, however, are bound by the provisions of the 1845 Act, the appropriate sections being Nos. 14 to 19. There is some divergence in the provisions of these two Acts, and the relative sections should be carefully compared, the points of agreement and difference noted. For example, Section 14 of the 1845 Act provides that transfers shall be by " deed," whilst Table A states that the transfer shall be in " any usual or common form," but it must be by a proper instrument of transfer. (See also Section 63 of Companies Act, 1929.)

Changes in ownership of shares may arise from one or other of the following causes—

(i) Sale by a member.
(ii) Death of a member.
(iii) Bankruptcy of a member.
(iv) Lunacy of a member.
(v) Gift.
(vi) Forfeiture.

The sale of a member's share is evidenced by the execution

and lodgment with the company of a transfer; whilst the changes represented by the death, bankruptcy, or lunacy of a member are evidenced by the production of the Probate documents, Letters of Administration, and the Court's orders in bankruptcy or lunacy. In the latter instances, the executor (or other representative) is entered upon the register in a representative capacity.

Under the provisions of Section 64 of the 1929 Act, executors or administrators may execute transfers in their representative capacity; but if they desire to become registered as members in their own right, it is customary for them to send to the company a "Letter of Request" to that effect, accompanied (in some instances) by a statutory declaration. Sometimes a formal transfer is executed, but this is not essential. The letter of request has the same effect and is a more inexpensive procedure, as it is exempt from stamp duty.

Many public companies include in their articles a clause requiring executors or administrators to transfer—within a year and a day of the date of the shareholder's death—the deceased shareholder's holding to some person who will be registered as a member in respect thereof, failing which the directors are authorized to withhold dividends until the shares are so transferred. Such companies usually issue printed forms of "Letters of Request" to the executors or administrators to enable them to become registered in a personal capacity.

Statutory companies, however, are able immediately to enter the deceased's representatives (under the authority of Sections 18 and 19 of the 1845 Act) as registered members upon the receipt of a statutory declaration and production of Probate or Letters of Administration.

The stamp duty on transfers was increased to £1 for a consideration of £100 by the Finance Act, 1920, and is now in accordance with the following tables—

Consideration not exceeding . .	£5	£10	£15	£20
	s. d.	*s. d.*	*s. d.*	*s. d.*
Stamp Duty .	1 –	2 –	3 –	4 –

Consideration not exceeding . .	—	£25	£50	£75
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
	—	5 –	10 –	15 –
£100 . . .	1 – –	1 5 –	1 10 –	1 15 –
£200 . . .	2 – –	2 5 –	2 10 –	2 15 –
£300 . . .	3 – –	—	3 10 –	—

In the table, the consideration is shown on the top horizontal column and the left-hand vertical column. For amounts between the even hundreds, first look at the right-hand column for the hundred, then at the top vertical column for the nearest amount in excess of the consideration stated in the transfer. The intersection of these two lines will give the appropriate stamp duty. Thus, when the consideration is £148 10s., the stamp required is £1 10s.; where the consideration is over £300, the stamp duty is at the rate of 10s. for every £50 or part thereof.

The stamp duty for a nominal consideration (which was not altered) is the fixed duty of 10s. This duty, however, is only applicable in the following instances (*vide* Inland Revenue circulars)—

(*a*) Vesting the property in trustees on the appointment of a new trustee or the retirement of a trustee.

(*b*) A transfer, as for a nominal consideration, to a mere nominee of the transferor where no beneficial interest passes.

(*c*) A transfer by way of security for a loan; or a re-transfer to the original transferor on repayment of a loan.

(*d*) A transfer to a residuary legatee of stock, shares, or other marketable security which forms part of the residue divisible under a will.

(*e*) A transfer to a beneficiary under a will of a *specific* legacy of stock, etc.

(*f*) A transfer of stock, etc., being the property of a person dying intestate, to the party or parties entitled to it.

(*g*) Transfers to a beneficiary under a settlement, on distribution of trust funds, stock, etc., forming the share or part of the share of those funds to which the beneficiary is entitled in accordance with the terms of the settlement.

Any transfer of stock, etc., by the executors of a will in discharge of a *pecuniary* legacy is, however, chargeable with *ad valorem* duty on the amount of the legacy or of such part of it as is discharged by the transfer, and this amount should be set forth in the instrument as the consideration for the transfer.

Similarly, transfers made on a sale, or in liquidation of a debt or in exchange for other securities, are subject to *ad valorem* duty on the value or agreed value of the consideration.

Prior to the passing of the Finance Act, 1909–1910, gifts of stock, etc., *inter vivos* (e.g. a gift of shares by a father to his son during the lifetime of the father) were only liable to 10s. stamp duty as on nominal consideration ; but the above Act provides that such gifts *inter vivos* are chargeable with *ad valorem* stamp duty with the value of the stock, shares, or other security as the consideration, and the basis of the charge for stamp duty.

Secretaries and other registering officials of a company are liable to a penalty of £10 if they accept transfers incorrectly stamped. (See Sec. 17 of the Stamp Act, 1891.) Where the secretary is not satisfied that the transfer is correctly stamped, he should require the transferee to have the duty adjudicated upon by the Commissioners of Inland Revenue under the provisions of Section 12 of the Stamp Act, 1891.

The Register of Transfers is now going out of use. Companies now usually bind the actual transfers in book form, say in 100's or 250's, and this obviously forms a perfect Register of Transfers, especially where a rubber stamp is used as described in Ques. 95.

ROUTINE WORK OF SHARE TRANSFER DEPARTMENT

85. *Describe the ordinary routine work of a Company's Share Transfer Department, and mention the principal books in use.* (C.I.S. Inter.)

The ordinary routine of the Share Transfer Department will include—

1. The certification of transfers and issue of balance tickets to transferor (or his broker).

2. The registration of transfers, powers of attorney, probates, letters of administration, marriage certificates, death certificates, etc.

3. The issue of notices of certification (or transfer) of shares to members.

4. The recording of transfers in the Register of Transfers, (where kept) and in the respective shareholders' accounts in the Register of Members and Share Ledger.

5. The recording of the exhibition of probates, letters of administration, and other documents in the Register of Probates, etc.

6. The preparation of new share certificates for signature and sealing; and their issue to the shareholders against Balance Tickets or Transfer Receipts—the latter sent to transferee (or his broker).

7. The preparation and issue of Dividend Warrants.

8. After the Annual General Meeting has been held, the preparation of the Annual Return for filing with the Registrar of Companies.

The principal books in use are—

1. The Register of Transfers.

2. The Register of Members and Share Ledger.

3. The Register of Probates, etc. (This book will have separate pages allotted to probates and letters of administration, powers of attorney, marriage certificates, death certificates, etc.) Some companies, however, will have separate books for each class of documents.

4. The Annual Return and Summary Book.

The dividends are usually prepared on loose sheets, but in many instances these are subsequently bound into books.

Where companies have different classes of capital, a separate Register of Members and Share Ledger will be kept for each class. If the company has issued debentures, a Register of Debenture Holders is also used and this will be necessary unless all the debentures are to bearer. The Register of Charges is usually kept by the Secretary, but it may be in the charge of the Transfer Registrar.

CERTIFICATION OF TRANSFERS: ITS MEANING AND LEGAL EFFECT

86. *What is meant by the Certification of Transfers, and what is its legal effect?* (C.I.S. Final.)

By certification of transfers is meant the lodgment with the company of the transferor's share certificate and the certifying on the transfer that the certificate for the shares named in the transfer has been deposited with the company.

Legally, certification is a statement of fact that certain documents have been lodged with the company which show, prima facie, that the transferor is a *bona fide* holder of the shares named. This statement does not amount to a warranty either of the transferor's title or of the validity of the

documents. If, subsequently, it transpires that there is some such defect, the company is not estopped from setting up the true facts. Certification is the act of the secretary and not of the company, so that if the secretary fraudulently certifies that the certificates are in the company's office the company is not liable. (*George Whitechurch* v. *Cavanagh, 1902*). The transferee's remedy is against the transferor and/or his brokers. Where, however, the defect has been in the certification, e.g. the document purporting to transfer fully-paid shares, when they have been only partly paid shares, it has been held that the company was estopped from denying that the shares were fully paid. (*Re Concessions Trust, McKay's case, 1896.*)

THE PRACTICE AS TO CERTIFICATION

87. *What is the practice as to Certification of Transfers?* (C.I.S. Final.)

Certification of transfers arises when a shareholder, disposing of part only of his holding—as represented by his share certificate—presents the transfer and the certificate to the company with a request that the transfer be "certified." The company retains and cancels the certificate, and marks the transfer in the following (or similar) manner on the upper left-hand side of the document.

Certificate for the within-mentioned............shares lodged.	
No................	For the Z Y X Co., Ltd.
Date................................19..	........................*Secretary.*

The transfer is then returned to the shareholder (or his stockbroker) together with a "Balance Ticket" for the unsold portion of his shares. A "certified transfer" is recognized on the Stock Exchange as "good delivery," i.e. as the equivalent of a transfer with share certificate attached. The seller is thus enabled to obtain payment for the shares sold, and retains in his own possession the Balance Ticket entitling him to a new certificate for the unsold shares.

After the transfer is completed by adding the buyer's signature, attestation, dating, and stamping, the document (accompanied by a fee of 2s. 6d.) is presented to the company

for registration, and a Transfer Ticket (more generally known as Transfer Receipt) is issued. In due course, the transferee receives a share certificate in exchange for the "Transfer Ticket."

The practice of keeping records of certified transfers varies with different companies. The more usual plan is to keep a "Register of Certified Transfers," but sometimes the only record kept is on the back of the surrendered and cancelled share certificate. The Register would record the following information—

LEFT-HAND RULING

Certification No.	Date Certified.	Presented by.	Transferor's Name.	No. of Shares.	Certificate Surrendered.		Balance Ticket.	
					No.	No. of Shares.	No.	No. of Shares.
101	*19. .* *Jan. 2*	*Brown & Co. Copthall Court*	*Smith, A.*	*100*	*451*	*250*	*61*	*150*

RIGHT-HAND RULING

Transferee's Name.	Date Lodged.	Transfer No.	Lodged by.	Remarks.
Jones, B.				

The columns left blank will be filled in when the Transfer is lodged for registration. The certificate is immediately cancelled, usually by means of a rubber stamp [CANCELLED] across the signatures and/or the seal.

Transfers need not be dated or stamped before certification, and an insufficiently stamped transfer may be certified, but the document should be marked "Further stamp of . .. required." Before acceptance for registration, it is, of course, essential to have the instrument completely in order.

The company's certifying officer should satisfy himself that the transfer is the valid transfer of the shareholder as evidenced by the attested signature of the transferor.

Although the practice is not universal, "Notice of Certification" should be immediately given to the shareholder to guard against the possibility of it being a forged transfer. Many companies, however, prefer to wait until the completed transfer is lodged for registration, when a "Transfer Notice" is issued. The former method, however, is considered the more desirable, as it gives earlier notice to the shareholder, thus more effectually safeguarding the company's position.

Occasionally, transfers are certified by the Secretary of a provincial Stock Exchange or by the Secretary of the Share and Loan Department of the London Stock Exchange, who forwards the certificate for cancellation to the company with a note of the transfers certified. In such instances, the Secretary of the Exchange forwarding the certificate will also give instructions for the disposal of the balance certificate.

CERTIFICATION: A SPECIFIC EXAMPLE

88. *Would you certify a Transfer which had not been signed by the transferor? Give reasons for your answer.* (C.I.S. Inter.)

It is the duty of the secretary (or other certifying officer) to satisfy himself that the proposed transfer is the valid act of the transferor and, in the absence of the attested signature of the transferor, certification should be refused. Although there is no privity of contract between the company and the transferee, it is not desirable to give any possible facilities for fraud. Obviously, improper use may be made of a certified transfer (unsigned by the transferor) if it got into dishonest hands.

ROUTINE DETAIL: CERTIFICATION TO NEW CERTIFICATE

89. *Describe in detail the passage of a transfer of shares from certification to issue of new certificate, stating what records are made at each stage.* (C.I.S. Inter.)

The stockbroker for the seller (transferor) of the shares usually prepares the form of transfer, and presents it to the company with the share certificate attached for certification. After examining the documents to see that they are in order, the secretary (or other certifying officer) "certifies" the transfer, retains and cancels the share certificate, and returns the transfer with a Balance Ticket for the unsold shares to

the stockbroker. Particulars of the shares on the certified transfer are endorsed on the share certificate or entered in a "Register of Certified Transfers" (see p. 75), and a pencilled note is made in the transferor's account in the Share Ledger. A notice *re* the certification of a transfer of shares is posted to the transferor by the company, preferably in a plain, opaque envelope.

The transferor's broker presents the "certified" transfer to the broker acting for the buyer (the transferee), receiving the purchase price in exchange. After obtaining the transferee's attested signature to the document and dating it, the completed transfer is presented to the company for registration with a fee of 2s. 6d. The company issues a Transfer Ticket (otherwise called Transfer Receipt) to the transferee's broker, on which is stated the date the broker may call for the new share certificate. (Transfers received by post are acknowledged and the new certificates posted to the transferees—or their brokers—when ready.)

The cancelled Share Certificate is now attached to the Transfer and particulars entered in the "Register of Transfers"; the date of lodgment also being recorded in the "Register of Certified Transfers."

After the transfer has been passed by the Board, new share certificates are made out for the transferee and the transferor. These are, in due course, exchanged for the Transfer Ticket and the Balance Ticket respectively. The transferor's account in the Share Ledger is debited with the shares disposed of, and the transferee's account credited with the shares he has acquired. If the transferee is a new member, a new account will naturally be opened. It is usual for the Register of Members and Share Ledger to be one volume. Often nowadays large cards are used in the place of a bound volume or set of volumes.

THE EXAMINATION OF TRANSFERS

90. *In registering transfers, what matters have you to scrutinize* (a) *generally,* (b) *particularly, at the present time?* (C.I.S. Final.)

The matters requiring attention when accepting transfers for registration are to see that—

1. The relative share certificate is surrendered to the company.

2. The company's name, number of shares, and their

distinctive numbers are correctly stated in the instrument of transfer.

3. The name, address, description, and signature of the transferor agrees with the company's records.

4. The transferee's full names, address, and occupation are given.

5. The transfer is complete with the signatures of both transferor and transferee attested, dated, and correctly stamped.

Where the transfer is for a nominal consideration, it must bear an endorsement setting out the facts entitling it to the nominal stamp duty. Alternatively, the adjudication stamp of the Inland Revenue must appear on the document.

TRANSFER SIGNED BY ATTORNEY OF SHAREHOLDER

91. *How would you deal with a transfer lodged for registration purporting to be signed by the attorney of a shareholder?* (C.I.S. Inter.)

91*a*. *Assuming you were requested to register a transfer executed under a power of attorney, what steps would you deem it prudent to take?*

A transfer purporting to be signed by the attorney of a shareholder should be accompanied by the Power of Attorney from which the attorney derives the authority to act for the shareholder, unless the latter document has been previously lodged with the company for registration. In the latter event, reference should be made to the Register of Documents for particulars of the "power"; and if it appears possible that, owing to the lapse of time or other circumstance, the authority to act may have been revoked, re-inspection of the Power of Attorney and a declaration that it is still in force should be demanded.

Should the transfer be presented without the "power," and the latter document has not been previously registered, the transfer should be returned with a request for the production of that instrument.

If the Power of Attorney contains suitable clauses authorizing the attorney to conduct such transactions for his principal and the deed is still in force, the transfer should be accepted for registration.

[See *also* Ques. No. 94 *re* Powers of Attorney.]

BALANCE TICKETS

92. *Describe the practice as to the issue of Balance Tickets.* (C.I.S. Inter.)

A Balance Ticket is issued to a transferor—usually upon certification—when the share certificate lodged is for a larger number of shares than is transferred, and it entitles the transferor to receive a new share certificate for the balance of the shares remaining in his name.

The procedure varies with different companies. Some companies issue a new certificate for every Balance Ticket, but most of the larger companies only issue new certificates for Balance Tickets when specially requested to do so. These companies will, however, "certify off" fresh transfers against the Balance Ticket. A fee of one shilling may be charged for the new certificate, but the charge is not universal.

THE RECORDS OF TRANSFERS, FEES, ETC.

93. *The Managing Director of a Company asks you to grant him the following information for the year ended 31st December, 19..*

(a) *The amount of transfer fees received during the year.*

(b) *The total number of shares transferred by members during the year.*

(c) *The dates upon which the seal of the company was affixed to three specified documents.*

(d) *Particulars of all Balance Certificates which were outstanding at the close of the year.*

Describe how you would proceed to collect the required information from the books and records of the company. (C.I.S. Final.)

(*a*) The amount of transfer fees may be ascertained from the Transfer Fees Account in the Private Ledger or from a summary of the Fees Cash Book kept in the Transfer Registration Department.

(*b*) The total number of shares transferred will be ascertained from the Register of Transfers or from the bound volumes of transfers, where this modern labour-saving method is adopted. A summary of the transfers presented at each Board Meeting should be recorded in the Minute Book, and the total may be ascertained from this record.

(*c*) The Seal Book will record the date when the seals were affixed to the documents. Alternatively, the information

may be found in the Minute Book or (if they are available) from an inspection of the documents.

(*d*) Where a Register of Cancelled Share Certificates is kept, the balance on old certificates outstanding will be shown therein. Alternatively, the information may be obtained from an inspection of the Balance Ticket Book, by summarizing the shares shown on the outstanding tickets.

REGISTRATION OF POWERS OF ATTORNEY

94. *A Power of Attorney is presented to you for registration. Give a short description of the examination to which you would subject it.* (C.I.S. Inter.)

A Power of Attorney being a document given by a shareholder (the donor) to another person (the donee), authorizing the donee to act in place of the shareholder, the first essential feature of the examination is to see that the name, address, description, and signature of the donor corresponds with the company's records, also that the signature is duly attested and the correct stamp duty impressed upon the document. The scope, extent, duration, and the possible revocation of the document must also receive attention.

THEIR SCOPE AND EXTENT. A general Power of Attorney usually delegates to the donee full powers to deal with the donor's entire business, whilst a " special power " enables the donee to do some particular act or class of acts only, and any limitation of the power must be duly noted. Particular attention should be devoted to ascertain whether the " power " authorizes the attorney—

" (1) To purchase, sell and/or transfer all securities (stocks, shares, funds, bonds and debentures) and to execute any instrument that may be necessary for such purpose;

" (2) To invest moneys in investments;

" (3) To receive the interest, dividends, bonuses or return of capital in respect of such securities or investments, and to give good receipts and discharges for the same;

" (4) To appoint a substitute."

Powers of attorney usually contain a clause empowering the donee " generally to do all such acts as may be necessary or expedient for carrying out the powers hereby given," but any such clause merely confers authority to do unspecified acts for the attainment of the specified acts, and must not be interpreted as an extension of the attorney's authorized

acts. Thus, a power to purchase and sell goods has been held "not to authorize the attorney to borrow money"; and if, for example, an attorney transfers shares out of his principal's name upon a transfer with a nominal consideration, such transfer bearing an endorsement that it is "a transfer by way of security for loan," then the secretary or company registrar should definitely ascertain that the power expressly authorizes such transactions.

Where two or more attorneys are appointed, it is essential to see whether the power authorizes them to act "singly," "jointly," "any two of them," etc., and also that any transfers received are executed in accordance with these provisions.

THEIR DURATION. Then, concerning the Power of Attorney, note should be taken as to whether the power is irrevocable, for a limited period only, or whether it is to be exercised only in certain circumstances, for example, whilst the grantor is abroad. In the latter case, it may be desirable to obtain a declaration that the circumstances named in the instrument are in force.

THEIR REVOCATION. It is a common practice, however, for the powers to be expressed as irrevocable for one year from the date of the instrument. Such documents continue in force until they are revoked, and as it is customary for the Power of Attorney to be returned to the principal upon revocation, the possession of the document, by the donee, is prima facie evidence that it is still in force. Moreover, the common law of agency applies to acts done under the authority of a Power of Attorney, as the donee is the agent of his principal, the grantor of the power.

The dicta of Lord Blackburn in *Debenham* v. *Mellon* (*1880*) may be usefully quoted—

> Where an agent is clothed with an authority and afterwards that authority is revoked, unless the revocation has been made known to those who have dealt with him, they would be entitled to say: "The principal is precluded from denying that the authority continued to exist, which he had led us to believe, as reasonable people, did formerly exist."

Where, however, lapse of time or other indications give rise to doubts, a re-inspection of the instrument and a declaration that it is still in force should be demanded.

ATTORNEY'S SIGNATURE. An authenticated specimen of the attorney's signature should be obtained, and in many instances such authentication will accompany the power.

Where possible, it should be authenticated by the principal; but, as in many cases this would be impossible, the specimen signature may be confirmed by a banker, solicitor, or broker.

EXECUTION UNDER SEAL. Although not essential, it is usual for powers of attorney to be executed under seal as a deed. Transfers of shares and stock of companies incorporated under the Companies (Clauses) Act, 1845, are required by statute to be by deed, and it is important to remember that a Power of Attorney conferring authority to execute a deed must itself be in the form of a deed.

ENTRY OF PARTICULARS. Particulars of the instrument, date, names of donor and donee, and the nature of the powers delegated should be entered in the company's Register of Deeds and Documents, and a record made in the shareholder's account in the Share Register. The document is then endorsed with a rubber stamp in the following manner and signed, after which it is returned to the attorney—

REGISTERED

The.............day of .... 19..

Z Y X Co., LTD.

No................ ....*Secretary.*........

STAMP DUTIES. The stamp duty on Powers of Attorney is 10s., but there are certain classes for which a lower rate of duty is required, viz.—

	s.	*d.*
Power for sale, transfer, or acceptance of Government Stock or funds of nominal value not exceeding £100	2	6
Power for receipt of dividend or interest on stock (one payment)	1	–
If for more than one payment . . .	5	–

[*Note.* This question has been dealt with more fully than the strict terms of the question requires, so as to give readers and students a clear view of secretarial procedure on Powers of Attorney. For examination purposes, a more condensed answer will suffice.]

THE RECORDS OF TRANSFERS

95. *Briefly explain two methods of recording transfer deeds of shares in the books of a limited company. State which method you prefer and why, and illustrate your answer*

by a specimen entry in any book of record you would recommend. (C.I.S. Inter.)

The first method is to enter summarized details of every transfer deed in a Register of Transfers, which forms the Journal or posting medium for entering the transactions in the Register of Members and Share Ledger. A specimen ruling for this book would be as follows—

LEFT-HAND RULING

Date Lodged.	Date of Registration.	No. of Transfer.	Transferor. Name.	Transferor. Address.	No. of Shares.	S.L. Fol.	Distinctive Nos. From	Distinctive Nos. To
19 . Jan 1	*19 . Jan. 15*	*51*	*Smith, Albert*	*51 Elm Road, Brighton*	*100*	*21*	*801*	*900*

RIGHT-HAND RULING

Transferee. Name.	Transferee. Address.	Transferee. Occupation.	S.L. Fol.	New Cert. No.	Remarks.
Jones, John	*25 High Street, Bathton*	*Draper*	*71*	*721*	

A second method, which entirely omits the use of the Register of Transfers, is to stamp the transfer deed with a rubber stamp containing the essential information indicated in the margin, and enter the particulars into the Register of Members and Share Ledger direct from the transfer deed.

Transfer No. . .	
Date lodged . . .	
Date of Regn. . .	
Old Cert. No. . .	
Transferor's Share Ledger Fol. .	
Transferee's Share Ledger Fol. .	
New Cert. No. . .	

Whilst the first method contains in a convenient form the particulars of every transfer deed, the second method has much to commend it. There is the saving of time and labour involved in writing up the Register of Transfers. Further, seeing that the particulars are posted direct

to the Share Ledger from the actual transfer document, there is less risk of error in entering the essential details. Where this method is used, it is the practice to bind the transfers in book form, say 100 or 250 in each volume.

[*Note.* Statutory companies are required, by the provisions of Section 15 of the 1845 Act, to keep a Register of Transfers.]

TRANSFERS—WHO SHOULD PREPARE THEM?

96. *Upon whom devolves the duty of preparing a transfer of shares—the buyer or the seller? When the transfer is prepared, what is the next step?* (C.I.S. Inter.)

The custom and practice generally is for the transfer to be prepared by the seller (or his broker, when the sale is made through a broker), and this practice has been recognized by the Courts in *Skinner* v. *City of London Marine Insurance Co., 1885*; and *London Founders' Association* v. *Clarke, 1888*. In the former case, it was stated " the contract is . . . that the seller shall execute a valid transfer of the shares . . . "

However, in *Birkett* v. *Cowper-Coles, 1919*, it was decided, on the authority of *Stephens* v. *Medina, 1843*, that the general rule as to shares, just as in the case of real property, was that it was the duty of the purchaser to prepare the document of transfer. In view of this dicta, it seems curious that the judgment was that the defendant (the purchaser) should pay for the shares upon the presentation by the plaintiff (the seller) of a transfer.

After the transfer is prepared, it should be executed by the transferor and, together with the share certificate, delivered to the transferee in exchange for the purchase price. The transferee completes the deed and lodges it (with the certificate attached) with the company for registration.

[*Note.* Transfers must in all cases be in writing, oral transfers being no longer permitted. Transfer by deed is usual, but the articles of a company may or may not require transfer to be by deed. What is known as the "common form" (see Table A, Cl. 18) is a transfer by deed.]

DISTRINGAS

97. *Outline the procedure for restraining the transfer of shares standing in the books of a company.* (C.I.S. Final.)

98. *What is the practice as to distringas?* (C.I.S. Final.)

" Notice in lieu of *distringas* " is one served on a third

party (e.g. a company) by a person who has acquired an interest in another person's property, e.g. by advancing a sum of money upon the security of stock or shares.

The notice is issued under the rules of the Supreme Court and, accompanied by an affidavit describing his interest in the shares, is served on the company by the "lender." The notice requires the company to abstain from registering a transfer of the shares named without giving the person interested an opportunity to apply to the Courts for an order to restrain the transfer.

The company is bound to accept and act on this notice. Entries should be made in the company's "Register of Deeds and Documents," and also in the shareholder's account in the Share Ledger. In practice it is usual to affix a slip over the member's account as a further safeguard against inadvertent transfer. Should a transfer of the shares (in respect of which the notice was served) be presented for registration, the company must give notice of such transfer (by registered post) to the person interested or to the parties serving the notice, stating that the transfer will, at the expiration of eight days from date, be duly passed by the directors, unless in the meantime proceedings are taken to prevent the registration of the transfer.

The transfer of stock or shares may be absolutely prevented by the creditor of the shareholder obtaining and serving upon the company an injunction or charging order.

Whilst a notice in lieu of *distringas* is not an absolute restraint of transfer, it has practically the same effect and is, comparatively, a more inexpensive method of procedure.

PROBATE AND LETTERS OF ADMINISTRATION

99. *Explain and distinguish between Probate and Letters of Administration.* (C.I.S. Final.)

Probate is the proof of the will of a deceased person before the Probate Court, but the term is more generally used to denote the official copy and proof of the will issued and sealed by the Registrar of the Probate Court to the executors named in the will.

Letters of Administration are the equivalent documents issued to the nearest next-of-kin of intestate persons (i.e. persons who have died without making a will); the administrator undertaking to distribute (or "administer") the

deceased's estate in accordance with the provisions of the law. Administrators are, however, also appointed in the following circumstances—

(1) Administration *ad litem.* Where the administrator undertakes that duty for the purposes of litigation only.

(2) Administration *cum testamento annexo.* Where the deceased's will does not name an executor or the executor named is unwilling or declines to act, Letters of Administration are issued " with the will annexed " to the person appointed.

(3) Administration *de bonis non.* Where the original executor or administrator has died without completing the distribution of the deceased's estate, new Letters of Administration are granted to the person who undertakes to complete the administration.

(4) Administration *durante absentia.* Where Letters of Administration are granted to the person who acts in the place of the executor or other person legally entitled to act but unable to do so owing to his absence abroad.

(5) Administration *durante minore aetate.* Where the administrator is appointed to act during the minority of an executor or other person entitled to the grant of Letters of Administration.

(6) Administration *pendente lite.* Where litigation is pending respecting the will or other matter arising out of the deceased's estate, the person appointed administers the estate until the action is settled.

Probate and Letters of Administration are the documents which form the authority for the executor or administrator to deal with the deceased's estate and, therefore, they must be lodged with the company for registration before stock or shares can be transferred or dividends paid.

THE REGISTRATION OF PROBATES

100. *Two shareholders in a company die, and there is produced to the company in one case Probate and, in the other, Letters of Administration. State exactly the entries that should be made in each case in the Register of Members.* (C.I.S. Inter.)

The distinction between Probate and Letters of Administration is dealt with in the preceding question. The record

to be made in the deceased shareholders' accounts will be as follows—

(*a*) PROBATE

(against the member's name)

Deceased.................................19....

Probate granted..... ....19.... to—

Executors: . ... .*John Smith, 21 Elm Vale,....*

....Hendon, Merchant............

| P.R. Fol... | .... *Arthur Brown, 101 Eastcheap,....*

........E.C.3, Merchant............

(*b*) LETTERS OF ADMINISTRATION—

(against the member's name)

Deceased .. .. 19....

| P.R. Fol... | Letters of Administration granted. ... . 19.... to—

Administrator: ..... .*Alfred Jones, 99 Walbrook....*

....E.C.4, Actuary ... .

The reference " P.R. Fol." indicates the folio in the Register of Probates, wherein is entered the record of the lodgment of the relative documents.

[*Note.* Ques. No. 126 illustrates the Register of Probates, with specimen entries.]

LIEN ON SHARES

101. *A company has under its Articles of Association a " first and paramount lien " on all its shares not fully paid for all moneys owing by a shareholder to the company. A, who holds 100 shares of £10 each, £5 per share paid, owes the company £200. A's bankers thereupon notify the company that he has charged such shares to them for £250. Can the company after such notice safely allow A to become further indebted to the company in reliance on its lien?* (C.I.S. Final.)

Although the company, under the provisions of Section 101 of the 1929 Act, is entitled to decline the acceptance of (or to enter upon its register) any notice of lien of third parties, yet the company is unable to claim priority for any debt which became due subsequently to the receipt of such notice (*Bradford Banking Co.* v. *Briggs, 1887*). Hence, after receiving the notice outlined in the question, the company cannot safely make further advances to A.

Upon receiving the notice, the company should return it and intimate to A's bankers that it is unable, by virtue of the provisions of Section 101 of the Companies Act, 1929, to accept the notice of lien, and further that, by its articles, the company has a "first and paramount lien" on A's shares for a debt of £200 owing by A to the company.

BLANK TRANSFERS

102. *State the legal effect of a Blank Transfer of Shares, distinguishing the cases where shares are transferable under hand and where they can only be transferred by deed.* (C.I.S. Final.)

The legal effect of a blank transfer of shares depends entirely upon the provisions of the company's articles as to the mode of transfer.

Where the articles provide that transfers of shares must be by deed, a blank transfer is inoperative. A mortgagee holding such a blank transfer as security does not possess a legally valid document, as a "deed" must be executed and the transferee's name must be inserted before the deed can be said to have been "executed" by the transferor. The subsequent addition by the mortgagee of his own or another person's name as transferee renders the document void as a deed; but the document is evidence of an agreement to transfer, and the transferee will possess an "equitable title," which he can enforce against the transferor.

When the articles provide that the transfer document shall be in any usual or common form, the delivery of a blank transfer to a purchaser is equivalent to an authority to fill in any name as transferee, and the transferee acquires a legal title to the shares. The transferee is entitled to be registered as a member of the company. Similarly, a mortgagee holding a blank transfer of shares is entitled (according to the terms of the agreement with the mortgagor and/or upon the default of the latter to repay the debt) to complete the blank transfer and lodge it with the company for registration.

REGISTRATION FEES

103. *What are the various documents for the registration of which by a company's share registration department it is usual to charge a fee? What is done with each of them?* (C.I.S. Inter.)

It is customary for most companies to charge a registration fee of 2s. 6d. for the following documents—

1. Instrument of Transfer of Stock, Shares, or Debentures. This document is retained by the company and filed (or bound) in numerical order. (Each form of transfer is consecutively numbered on lodgment.)

2. Probate or Letters of Administration. The names and addresses, etc., of executors or administrators, and summarized particulars of the document, are entered in the Register of Probates and the Register of Members, after which the documents are endorsed with the fact of registration and returned to the executor or administrator, or to the person lodging the documents, e.g. solicitor.

3. Power of Attorney. Particulars of the authority delegated, the name and address of the attorney, etc., are entered in the Register of Documents, after which the document is endorsed and returned to the attorney or his representative.

4. Marriage Certificate. Particulars are recorded in the Register of Documents and Register of Members of the new (married) name of the female shareholder, date of marriage, etc.; the certificate is endorsed and returned to the member.

5. Death Certificate. On the death of one of the holders in a joint account, a death certificate is produced and registered by the company. After registration, the certificate is returned.

6. Orders in Bankruptcy or Lunacy. An office copy of the Court's order is usually served on the company and retained. Particulars are entered in the Register of Documents and Register of Members. These orders evidence the title of the trustee in bankruptcy or lunacy to act on behalf of the shareholder.

7. Notice in lieu of *distringas*. An office copy of the official notice, accompanied by an affidavit by the party interested in the shares, is served on and retained by the company. Particulars are entered in the company's registers.

8. Request by executors to be placed on Register of Members.

9. Change of name of shareholder by deed-poll, etc.

[*Note.* Unless the company's articles authorize the charge, these fees are not properly chargeable. Table A authorizes the fee on only instruments of transfer. See Clause 19.]

LEGAL REPRESENTATIVES OF DECEASED SHAREHOLDERS

104. *On the death of a shareholder, in whom do his shares vest? In the case of the death of* (a) *an executor, or* (b) *an administrator who has not been registered as a shareholder, who may deal with the shares of a deceased shareholder?* (C.I.S. Inter.)

The shares will vest in the legal personal representative of the deceased shareholder, viz., the executor appointed by the deceased's will, or the nearest next-of-kin (where the deceased leaves no will) who is appointed administrator. Probate or Letters of Administration must be produced for registration in the company's books.

(*a*) On the death of an executor, who has not been registered as a member, the executor of the deceased executor is entitled, upon production of the probate of the executor's will to deal with the shares of the deceased shareholder. The administrator of the executor, however, is not so entitled. The nearest next-of-kin of the deceased shareholder should take out Letters of Administration *de bonis non*, and the person to whom these documents are granted will be the only person entitled to deal with the shares.

(*b*) Neither the executor nor the next-of-kin of an administrator can be recognized as entitled to deal with the shares. The administrator *de bonis non* of the deceased shareholder is the only person entitled to act.

[See page 70 for the procedure of Statutory Companies.]

RE-SEALING OF COLONIAL PROBATE

105. *You receive the following letter—*

> *My late cousin, A B, who is registered as a holder of 20 shares of your company, has died in New Zealand, where he was domiciled, and I have written to the Executor in the Dominion agreeing to buy these shares. As the shares constitute his sole English estate, I shall be glad to know that you will register the transfer without requiring probate, and I shall be pleased to give you an indemnity, if desired.*

Write a reply, explaining fully the English law, and stating what documents (or alternative documents) you would require to be produced. (C.I.S. Final.)

THE Z Y X CO., LTD.,
1 FENCHURCH AVENUE,
LONDON, E.C.3.

To......................... *1st August*, 19....

Re A. B. deceased.

Dear Sir,

I have to acknowledge receipt of your letter of................, but regret to inform you that I am unable to accede to your wishes.

The requirements of the English law provide that Colonial Probates or Letters of Administration must be re-sealed at the Principal Probate Registry of the High Court of Justice in London, before the title of an executor or administrator to deal with the English estate of the deceased can be recognized. Until this has been done and the re-sealed documents exhibited to this company for registration, no dividends can be paid and no transfer of the shares can be permitted.

It will be necessary for the executor in New Zealand to arrange for the Probate documents to be forwarded to London and an application made to the Probate Registry named above for the re-sealing of the Probate. This application must be made by the personal representative (or his attorney) of the deceased.

After probate has been re-sealed, it must be exhibited to this company for registration (accompanied by the share certificate); and if the English representative is appointed by a power of attorney, the latter document must also be exhibited. The registration fees payable to this company will be 2s. 6d. for each document.

Yours faithfully,
V. WYSE,
Secretary.

CHAPTER VII

FORFEITURE OF SHARES

FORTUNATELY, forfeiture of shares is comparatively rare, as the majority of shareholders respond to their obligations and liabilities. Hence, most students and many secretaries are compelled to rely on the textbooks for information as to the procedure. In practice, the terms of the Notice of Forfeiture, the Resolution of Forfeiture, and the Statutory Declaration are often drawn by the company's solicitors.

Students should note and compare the divergencies in the provisions as to forfeiture of shares between the Companies Act, 1929, and the Companies (Clauses) Acts, 1845 and 1863. The former Act contains no statutory provisions, all the regulations being contained in Table A; consequently those companies which do not adopt Table A are at liberty to make their own regulations. Statutory companies are bound by the provisions of the 1845 and 1863 Acts. The regulations under Table A are contained in Clauses 23 to 29, whilst the corresponding provisions of the 1845 Act are given in Sections 29 to 34. One of these divergencies may be quoted. Companies incorporated under the 1929 Act, adopting Table A, have power to sell the forfeited shares and, in the event of any surplus being received, such surplus may be retained for their own benefit, whilst statutory companies, under the provisions of Section 34 of the 1845 Act, can only sell such shares as will be sufficient to pay the arrears of calls, interest, and expenses, and the defaulting shareholder is entitled to claim any surplus that may be realized. The 1863 Act authorizes (1) the cancellation of forfeited shares and (2) surrenders of shares.

Moreover, Table A vests full powers of forfeiture in the directors; the 1845 Act requires the forfeiture to be confirmed by the company in general meeting.

WHAT IS FORFEITURE?

106. *Explain, briefly, Forfeiture of Shares.* (C.I.S. Inter.)

Forfeiture of shares occurs when a shareholder neglects to pay calls validly made; and the directors, in pursuance of

the power conferred upon them by the articles of association, pass a resolution forfeiting his shares, after having given due notice to the defaulting shareholder.

The shareholder thereupon ceases to be a member of the company and loses all right or interest in his shares. Moreover, he may still be liable to pay the outstanding calls with interest to date of forfeiture; but this will depend upon the provisions of the company's articles.

The procedure outlined in the company's articles of association must be strictly observed; any irregularity or deviation from the authorized procedure will render the forfeiture invalid. In the absence of any articles authorizing forfeiture, the company must petition the Court for an Order sanctioning the forfeiture (*Clarke* v. *Hart*, *1858*).

RESOLUTION OF FORFEITURE

107. *Draw a specimen Resolution (assuming a concrete case) for the Forfeiture of Shares by reason of the non-payment of calls thereon.* (C.I.S. Final.)

RESOLVED that Arthur Slowe, of 54 Bircham Avenue, Dilatown, the registered holder of 200 shares numbered 1,001 to 1,200 inclusive, having failed to pay the final call thereon of Five shillings per share due on the 1st day of March, 19.., and having failed to comply with the terms of the notice of forfeiture dated the 1st day of July, 19.., such call letter and notice having been duly served on him, the said shares shall be and the same are hereby forfeited. It was FURTHER RESOLVED that the said shares be sold, disposed of, and re-issued in such manner as the directors shall think fit, and that the secretary be and he is hereby instructed to forward a copy of these resolutions to the said Arthur Slowe.

[*Note.* The above resolutions contain the whole of the essential facts, together with the directors' decision, and would appear to be the type of answer required by the examiner. An alternative method is to give the essential facts in the form of a " Minute of Narration "; the Resolution recording the directors' decision. See next question.]

THE RECORDS OF FORFEITURE

108. *The Z Y X Co., Ltd., issues further capital, and A applies for 1,000 shares of £1 each, payable—*

5s. on application (lists close 31st March, 19..).
5s. on allotment (allotment letter dated 2nd April, 19..).
10s. on 1st May, 19...

A fails to pay the call, and on the 15th June, 19.., the shares are forfeited, being subsequently issued on 1st Sept., 19.., to S. MacGregor at 15s. fully paid. Show the entries in the following books recording these transactions—

(a) *Minute Book;* (b) *Register of Members;* (c) *Private Ledger*
(d) *Balance Sheet at 30th June, 19...* (C.I.S. Final.)

(*a*) Extracts from Board Meetings' Minute Book, 15th June, 19... It having been reported that A.................of...................... had not paid the final call of Ten Shillings per share on the 1,000 shares registered in his name, and also that no response had been received to the notice of forfeiture dated 1st June, 19.., duly served on him; it was RESOLVED that the said 1,000 shares, numbered 50,001 to 51,000 inclusive, registered in the company's books in the name of A................be and the same are hereby forfeited for non-payment of calls. It was FURTHER RESOLVED that the said shares be sold, disposed of, and re-issued in such manner as the directors shall think fit; and that the secretary be and he is hereby instructed to forward a copy of these resolutions to the said A.............. .

Entry dated 1st September, 19...

It was reported that the negotiations with ....S. MacGregor.... of........................for the sale of the 1,000 shares, formerly registered in the name of A................and forfeited for non-payment of calls, had resulted in an offer by ....S. MacGregor.... to purchase these shares as fully paid at the price of 15s. per share. The secretary explained that the company had already received 10s. per share on each of these shares, and that acceptance of this offer would result in the company receiving a total of 25s. per £1 share: a premium of 5s. per share. The directors deciding to accept this offer, it was RESOLVED that 1,000 shares, numbered 50,001 to 51,000, be and are hereby issued to ....S. MacGregor.... of............................as fully paid at the price of 15s. per share; and that the secretary be and he is hereby authorized to forward a letter of acceptance of the offer, the amount due (£750) being payable forthwith. It was FURTHER RESOLVED that £250 should be transferred from the Forfeited Shares Account to the Capital Account, representing the 5s. per share required to make the shares fully paid, and the remaining £250 be transferred to Premium on Shares Account.

JOURNAL ENTRIES

19...		£	s.	d.	£	s.	d.
June 15	Share Capital Account *Dr.* To Forfeited Shares Account. being nominal value of 1,000 shares, Nos. 50,001 to 51,000 registered in the name of A.... forfeited for non-payment of Calls. (*Vide* Minute Book, 15th June, 19 . .)	1,000	–	–	1,000	–	–
June 15	Forfeited Shares Account *Dr.* To First and Final Call Account being amount unpaid on the above shares.	500	–	–	500	–	–
Sept 1	Sundries *Dr.* To Share Capital Account				1,000	–	–
	Shares Re-issued Account . being re-issue of 1,000 shares, Nos 50,001 to 51,000, credited as 5s. paid to S. MacGregor (*Vide* Minute Book.)	750	–	–			
	Forfeited Shares Account . being transfer of amount required to make above shares fully paid.	250	–	–			
,,	Forfeited Shares Account *Dr.* To Premium on Shares Account . . . being transfer of amount received in excess of nominal value of shares.	250	–	–	250	–	–

PRIVATE LEDGER

Dr. CAPITAL ACCOUNT *Cr.*

19...		£	19..		£
June 15	To Forfeited Shares A/c .	1,000	May 31	By Balance b/f .	60,000
,, 30	,, Balance c/d .	59,000			
	£	60,000		£	60,000
			June 30	By Balance b/d .	59,000
			Sept. 1	,, Shares Re-issued A/c .	1,000
				£	60,000

Dr. FORFEITED SHARES ACCOUNT **Cr**

		£			£
June 15	**To Final Call** .	500	June 15	**By Capital A/c**	**1,000**
,, 30	**,, Balance c/d** .	500			
		£1,000			**£1,000**
Sept. 1	To Shares Re-issued .	250	June 30	By Balance b/d .	500
,,	,, Prem. on Shs.	250			
		£500			£500

Dr SHARES RE-ISSUED ACCOUNT *Cr.*

		£			£
Sept. 1	To Capital A/c .	1,000	Sept. 1	By Forfeited Shares A/c .	250
			,,	,, Cash . .	750
		£1,000			£1,000

Dr. PREMIUM ON SHARES ACCOUNT *Cr.*

					£
			Sept. 1	By Forfeited Shares A/c .	250

EXTRACT FROM BALANCE SHEET

AT 30TH JUNE, 19..

CAPITAL AND LIABILITIES

Nominal Capital—

	£ s. d.	£ s. d.
60,000 shares of £1 each		60,000 – –

Subscribed Capital—

	£ s. d.	£ s. d.
60,000 shares of £1 each .	60,000 – –	
Less 1,000 Forfeited Shares . . .	1,000 – –	59,000 – –
Forfeited Shares Account		500 – –

REGISTER OF MEMBERS

Name .... *A* .... Date of Entry as a Member .... *2nd April, 19* . . ..
Address .... Date of ceasing to be a Member .... *15th June, 19* . . ..
Description ....

Shares Disposed of.					Shares Acquired.					Dr. Cash Account.							Cr.
Date.	Tra'sfer No.	No. of Shs.	Distinctive Nos.	Nominal Value.	Date.	Trsf. or Alt. No.	No. of Shs.	Distinctive Nos.	Nominal Value.	Date.	Particulars.	No.	Amount.	Date.	Particulars.	C.B. Fol.	Amount.
				£ s. d.					£ s. d.				£ s. d.				£ s. d.
19. . . June 15	—	1,000	50,001–51,000	1,000 – –	19. . . Apr. 2	21	1,000	50,001–51,000	1,000 – –	19. . . Apr. 2	Appn. & Allot.	21	500 – –	19. . . Mar. 31	Applicn. .	2	250 – –
										May 1	1st Call .	21	500 – –	Apr. 4	Allotment .	7	250 – –
	Transferred to Forfeited Shares Account 15th June, 19 . . Shares Forfeited by Resolution of the Directors																

Name .. .. *Forfeited Shares Account* .... Date of Entry as a Member ....
Address .... Date of ceasing to be a Member ....
Description ....

Date.	Tra'sfer No.	No. of Shs.	Distinctive Nos.	Nominal Value.	Date.	Trsf. or Alt. No.	No. of Shs.	Distinctive Nos.	Nominal Value.	Date.	Particulars.	No.	Amount.	Date.	Particulars.	C.B. Fol.	Amount.
				£ s. d.													
19. . . June 15	Transfer	1,000	from A 50,001–51,000	.... 1,000 – –	19. . . Sept. 1	Re-issued	1,000	to S. MacGregor 50,001–51,000	1,000 – –								

Name .... *S. MacGregor* .... Date of Entry as a Member. .... *1st Septr., 19* . . ..
Address .... Date of ceasing to be a Member ....
Description ....

Date.	Tra'sfer No.	No. of Shs.	Distinctive Nos.	Nominal Value.	Date.	Trsf. or Alt. No.	No. of Shs.	Distinctive Nos.	Nominal Value.	Date.	Particulars.	No.	Amount.	Date.	Particulars.	C.B. Fol.	Amount.
													£ s. d				£ s. d.
					Sept. 1	51	1,000	50,001–51,000	1,000 – –	19. . . Sept. 1	In full .	51	750 – –	Sept. 4	In full. .	12	750 – –
											5s. per share *credited* as *paid* on issue						

CHAPTER VIII

DIRECTORS

WHILST a precise definition of the expression "Director" has not been given in any of the Companies Acts (existing or repealed), Section 380 of the Companies Act, 1929, states—

> "'Director' includes any person occupying the position of director by whatever name called";

and Section 3 of the Companies (Clauses) Act, 1845, enacts that—

> "The expression 'the Directors' shall mean the Directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of Directors, Managers, Committee of Management, or any other name."

The exact position of directors is hard to define, but, from some points of view, directors are trustees for the shareholders, and from others, agents or managing partners.

The provisions of the 1929 Act applying specifically to directors are Sections 139 to 151, but many other sections (e.g. Sec. 37), *inter alia*, also endow directors with duties, liabilities, and responsibilities. Clauses 67 to 88 of Table A contain the regulations applicable to directors; defining their powers, duties, and proceedings. Special Articles may, of course, vary these regulations. The corresponding enactments of the Companies (Clauses) Act, 1845, are found in Sections 81 to 100.

APPOINTMENT OF DIRECTORS

109. *In what different ways can Directors be appointed? Are any statutory conditions attached to any of these methods of appointment?* (C.I.S. Inter.)

Directors may be appointed as follows—

1. By specific appointment in the articles. In this instance, each director must sign and file with the Registrar of Companies "a consent in writing to act as a director," and either sign the memorandum for his qualification shares or sign and file a contract to take (and pay for) them from the company. (See Sec. 140.)

2. If Table A applies (or is not excluded), by a majority of the subscribers to the memorandum. (See Clause 64 of Table A.)

3. If Table A is excluded, and special articles containing a suitable clause are filed, by the subscribers (or a majority of them) to the memorandum.

4. By the shareholders in general meeting.

5. Where the articles contain suitable provisions, the directors may have power to elect additional directors or to fill casual vacancies in the directorate.

Upon the formation of a company, a list of persons who have consented to become directors must be filed with the Registrar. (Sec. 140.) A public company registered since the commencement of the 1929 Act must have at least two directors. (Sec. 139.)

In every instance, directors must obtain their share qualification within two months of their appointment. (Sec. 141.)

DIRECTORS' QUALIFICATION

110. *A company's Articles of Association prescribe that a director must hold a specified number of shares "in his own right." Explain the meaning of this provision, giving illustrations.* (C.I.S. Final.)

Apparently, the object of the clause containing the phrase quoted above is to ensure that the directors shall personally invest their own money in the qualification shares, but it has been legally held that the director need not be the beneficial owner. In *Sutton* v. *English & Colonial Produce Co., 1902*, it was decided that the true test was that the holder "must be a person who holds in such a way that the company can safely deal with him in respect of his shares, whatever his interest may be in the shares."

The phrase, therefore, means that the qualification shares must be registered in the director's own name as sole owner, although, in fact, the director may hold them as a trustee.

Where, however, the company has received notice that the director is bankrupt (*Sutton* v. *English & Colonial Produce Co.*) or the director is entered in the Register of Members as a liquidator or executor (*Boschoek Prop. Co.* v. *Fuke, 1906*), the shares will cease to be the qualification shares, and the director automatically vacates his office.

INCREASING THE DIRECTORS' REMUNERATION

111. *The articles of a company provide that the remuneration of each director shall be at the rate of £200 per annum. Can £300 be paid to each? If so, how can this be legally effected?* (C.I.S. Inter.)

Where the articles specify definitely the amount of the directors' remuneration, it is not possible to increase that remuneration unless the articles also give power to the company in general meeting to "vary the directors' remuneration from time to time." In the latter case, the directors' fees may be increased by passing the appropriate resolutions at the next Annual General Meeting or at an Extraordinary General Meeting specially convened. (See Table A, Cl. 65.)

Where, however, the articles do not give authority to vary the directors' remuneration, it will be necessary either to alter the articles by special resolution conferring such authority or, alternatively, to pass a special resolution sanctioning the payment of the increased remuneration.

DIRECTORS MUST ACT *BONA FIDE* FOR THE BENEFIT OF THE COMPANY AS A WHOLE

112. *Company A holds nine-tenths of the shares of Company B. The same persons are directors of both. It is desired to increase the remuneration of the directors of Company B, which is fixed by Article 70 of that company. What steps are necessary?* (C.I.S. Final.)

The exact procedure will depend upon the precise wording of Article 70 of Company B's articles, the chief factor being whether that article (or other articles) give power to the company to vary the directors' remuneration.

The steps to be taken are described in Question No. 111. In addition, Company A should appoint a proxy as its representative to attend and vote at the meetings held by Company B; and as it holds nine-tenths of the shares in the latter company, the resolutions will, of course, be duly passed.

Whilst the directors are entitled to reasonable and adequate remuneration, they must act *bona fide* and in the interests of the company as a whole. They must not use their

controlling powers to vote themselves excessive remuneration at the expense of the minority.

In *Jonas* v. *Orders & Handford Steamship Co., 1920*, the company had passed an extraordinary resolution (with a view to subsequent confirmation as a special resolution —then necessary under the existing law) adopting new articles. The management was vested in a shipping firm, and amongst the alterations were provisions for increased remuneration and other provisions which, in effect, prevented the shareholders from calling the management to account. An injunction was granted, restraining the holding of the confirmatory meeting, on the ground that the proposed alterations were for the benefit of the managers and not for the company as a whole.

DIRECTORS' CONTRACTS (PERSONAL INTEREST)

113. *Discuss the voting of Directors in matters on which they are personally interested.* (C.I.S. Final.)

Clause 72 of Table A provides that a director shall vacate his office if he is concerned or participates in the profits of any contract with the company except in those instances where he is indirectly interested by reason of his being a shareholder of another company which has entered into contracts, or done any work for the company of which he is a director. But he must not vote in respect of any such contract or work.

Most "special" articles of association, however, authorize directors to make contracts or to participate in contracts with the company upon making a full disclosure of their interests to their fellow-directors, but the articles also usually forbid such directors from voting at Board Meetings on matters in which they are personally interested. Whilst a director can discuss at the Board Meetings matters in which he has a personal interest, he must not be included in the number of directors required to form a quorum. Directors may, however, discuss and vote at General Meetings on these matters.

The disclosure by a director of his interest in contracts with his company is compulsory, under penalty. (See Sec. 149.)

It will be observed that acts which are *ultra vires* the directors, may be *intra vires* the company; and in the case *In re Express Engineering Works, Ltd, 1920*, the legal dicta

was that a Board Meeting of a private company of which the directors were the sole shareholders, and where every member was present, may be treated as a general meeting of the shareholders for the purpose of conferring validity upon the acts of directors in voting upon matters in which they were personally interested. It is quite clear, however, that in order to constitute the meeting as a general meeting, not only must every member be present, but every member must also have the power to waive and, impliedly, have consented to waive the customary formal notice of a general meeting.

In this case, the directors had voted upon a matter in which they were personally interested, viz., the issue of debentures to themselves; and the liquidator questioned the validity of their issue. On the grounds above stated, the issue was held to be valid.

DIRECTORS' POWERS TO FILL VACANCIES IN THE DIRECTORATE

114. *A company's Articles of Association give power to the directors to fill any " casual vacancy " occurring in the office of director. A director dies and three Annual General Meetings are held before the question of filling the vacancy arises. Can the directors fill the vacancy under the power referred to, or must the appointment be made by the company in General Meeting?* (C.I.S. Final.)

It is customary for a director appointed to fill " a casual vacancy " to hold office only for the unexpired portion of the period for which the retiring (or deceased) director was elected. As it is usual for articles to provide that one-third of the directors shall retire each year, and as more than three years have elapsed since the vacancy occurred, the directors cannot validly fill the appointment under the article quoted in the question, the " unexpired period of office " having been completed.

The correct procedure would be for the company to fill the vacancy in General Meeting.

Section 143 of the Companies Act, 1929, provides for the validity of acts performed by a director, notwithstanding any defect that may afterwards be discovered in his appointment, so that if the directors in misapprehension of their powers filled the vacancy, the acts of the person appointed would be

legally correct and valid. The company, in General Meeting, would, moreover, have power to confirm the appointment.

It should be noted, however, that most articles confer power on the directors to appoint, at any time, a person as "an additional director" who shall hold office until the next following Ordinary General Meeting, but who shall then be eligible for re-election by the shareholders. (See Table A, Cl. 79.)

DIRECTORS' RESIGNATION

115. *You have received a letter from a director resigning his seat on the board. What should you do? Give also full details of the formalities necessitated by a change in the directorate.* (C.I.S. Inter.)

The secretary should acknowledge receipt of the letter of resignation, advise the other directors of the resignation, and place the matter on the agenda for the next board meeting.

The articles of association usually confer power on the directors to fill a casual vacancy; any director so appointed shall hold office only for the remainder of the term for which the retiring director was elected, and he shall then be eligible for re-election. (See Cl. 78, Table A.) In the absence of such a clause, the vacancy can only be filled by the shareholders in General Meeting.

Any change in the directorate must be recorded by the secretary in the company's Register of Directors and Managers. Notice of any such changes must be given to the Registrar of Companies. (Sec. 144 of the 1929 Act.) This is accomplished by filing with the Registrar a revised copy of the Register of Directors and Managers, placing in the last column against the directors' names the words "resigned," "additional," "dead," "in place of ....," with the date of appointment, resignation, etc. Notice must be given within fourteen days.

If the directors' names are shown on the company's letter paper, etc., the name of the resigning director must be deleted.

The director will be entitled to his fees up to the date of resignation, according to the terms of his agreement with the company and/or the provisions of the company's articles.

COMMITTEES OF THE BOARD

116. *Explain the Committee System for carrying on the work of a Company, and discuss its advantages and disadvantages.* (C.I.S. Final.)

Provided that the articles authorize the directors to do so, they may delegate their powers (or some of them) to a committee of their number, and the "committee" need only consist of one director; but it is usual to appoint a larger number. It is customary for the articles to provide that the regulations relating to meetings of directors (keeping minutes, etc.) shall apply to committees. (See Cls. 70 and 85–88 Table A.)

Committees are usually appointed to deal with routine matters, e.g. financial arrangements or share transfers; they may, however, be appointed for some special purpose, such as the opening of new branches or amalgamation with another company.

Whilst it is advisable for committees to be treated in the same manner as a full board as regards Agenda, separate Minute Books, etc., yet many committees meet quite informally for the transaction of routine work. Permanent committees meet regularly and, usually, a separate Minute Book is kept to record its own transactions, this book being produced at full board meetings. In the absence of a separate Minute Book, a summarized report of the proceedings must be prepared and submitted to the next Board Meeting for confirmation.

The advantages of appointing committees are—

1. The saving of time in delegating routine matters to a small committee.
2. Greater opportunities of fuller and more detailed investigation, such committees obtaining more satisfactorily the essential information required by the board.

The disadvantages attendant upon committees are—

1. Occasionally, the board may delegate questions of policy, which are, essentially, questions to be decided by a full board.
2. Matters are sometimes dealt with by a committee which should be relegated to the full board.

Where, however, committees are appointed to deal solely with routine work or to obtain information upon special matters, reporting thereon to the board, the committee system results in greater efficiency and dispatch. Cohesion is usually gained by the chairman of the directors being *ex officio* chairman of each such committee.

PARTICULARS OF DIRECTORS

117. *State briefly the provisions of the law as to the particulars necessary to be given in a company's register of directors and in its returns, etc.*

The Register of Directors and Managers kept by the company, and the returns filed with the Registrar under Sections 108, 144, and 344 of the 1929 Act, must contain—

(*a*) The present Christian name or names and surname.
(*b*) Any former Christian name or names and surname.
(*c*) Nationality and nationality of origin (if other than present nationality).
(*d*) Usual residence.
(*e*) Any other business occupation (if any) and particulars of any other directorships he holds.

A company must, within fourteen days of the appointment of directors or of any change, send to the Registrar a return in the prescribed form containing the particulars specified in the register, and a notification of any change.

The Register of Directors is to be open to inspection of members without charge, and of other persons on payment of a sum not exceeding one shilling.

Companies registered after 22nd November, 1916, and foreign companies establishing a place of business in the United Kingdom after that date, are required to show on all business letters, show cards, trade catalogues and circulars, the names of all the directors and their nationality (if not British). The Board of Trade, however, has power to grant exemption as to the publication of names where special circumstances exist, subject to such conditions as the Board of Trade may order.

DIRECTORS' AUTHORITY TO DISPOSE OF COMPANY'S ASSETS

118. *To what extent is it* (a) *legal and* (b) *proper for a Board of Directors to dispose of their company's assets without consulting the shareholders? Give your reasons.* (C.I.S. Final.)

With regard to the company's trading or circulating assets, it is both legal and proper for the directors to dispose of them. This class of assets being acquired, produced, or manufactured

for the purpose of sale, it is the directors' duty to dispose of them to the best advantage, and with the proceeds acquire other assets for the purpose of re-sale, the difference between the cost or purchase price and selling price being the company's profit. Worn-out or obsolete fixed assets (Plant and Machinery, etc.), should also be disposed of by the directors, and replaced by new and efficient plant.

Where, however, the sale of the whole (or a branch) of the company's undertaking is contemplated, the provisions of the company's memorandum and articles should be consulted, to see what powers of sale are conferred upon the directors. If part only of the company's undertaking is sold for cash, the directors may possibly be legally entitled to complete the transaction on their own responsibility. Whether such a sale is "proper" or not, will largely depend upon circumstances.

When the sale of either the whole of the undertaking or part is for shares in another company, provisional contracts only should be entered into by the directors, and these contracts should be submitted to the shareholders for confirmation. (See Sec. 234.)

CHAPTER IX

THE STATUTORY AND OTHER BOOKS OF A COMPANY

It is interesting to note the comparative requirements of the Companies (Clauses) Act, 1845, and the Companies Act, 1929, as regards the books which must be kept by companies incorporated under the respective Acts. The statutory requirements are as follows—

1845 Act	1929 Act
Register of Shareholders (*Sec. 9*).	Register of Members (*Sec. 95*).
Register of Consolidated Stockholders (*Sec. 63*).	Not compulsory.
Shareholders' Address Book (*Sec. 10*).	Not compulsory.
Register of Transfers (*Sec. 15*).	Not compulsory.
Register of Mortgages and Bonds (*Sec. 45*).	Register of Charges (*Sec. 88*).
Book of Proceedings (*Sec. 98*).	Minute Books (*Sec. 120*).
Not compulsory.	Register of Directors and Managers (*Sec. 144*).
Not required.	Annual Return, etc. (*Sec. 108*).

Whilst there is some slight divergence, yet most of the requirements are strikingly similar; and the books that are not compulsory are, in each case, almost invariably kept. The following statutory books are described in the present chapter—

Register of Members (Ques. Nos. 119 and 120),
Annual Return (Ques. No. 125);

whilst the other statutory books are included in the chapters on "Directors," "Minutes," and "Debentures" respectively, viz.—

Register of Directors (Ques. No. 117),
Minute Books (Ques. Nos. 175 and 176),
Register of Mortgages (Ques. No. 142).

Many other books are either necessary or desirable for the majority of companies.

Amongst these may be included—

Proper Books of Account—see page 141.
Applications and Allotments Book,
Share Certificate Book,
Register of Transfers,
Balance Ticket Book,
Transfer Ticket Book,
Register of Transfers certified,

Register of Powers of Attorney,
Register of Probates, etc ,
Directors' Attendance Book,
Register of Documents sealed,
Dividend Book ;

and, in addition, various record or statistical books that most trading companies find it essential to keep.

Loose-leaf Ledgers have come rapidly into favour of recent years for books of account, etc. ; but, having regard to the precise wording of Section 95 of the 1929 Act, doubt is expressed in some quarters whether they may be safely used for Share Ledgers, the question arising whether a Loose-leaf Share Ledger is a *book* within the meaning of the Act. Indexes, however, are needed to all books, and many large companies have adopted the card index system for use in connection with the share ledgers. An illustration of a specimen card is appended. On the reverse of the card appears a summary of shares acquired, shares disposed of, and balances held.

Name	*Membership*	
Address	Entry Date	19
Occupation	Cesser Date	19
	Preference Shares	
	Ordinary Shares	
Dividend Instructions	Probate Letters of Admn	
Power of Attorney	Other Documents registered	

THE BOOKS REQUIRED

119. *Give a list of the books which must be kept by every limited company under the Companies Act, 1929, and give forms of an Application and Allotment Book, and Share Ledger, with three specimen entries in each.*

119a. *What books must be kept by a limited company? What other books do you consider it advisable should be kept?*

The statutory books which must be kept by limited companies under the provisions of the Act, are—

1. The Register of Members. (Sec. 95 of the 1929 Act.)
2. The Annual Summary of Shares and Capital Book. (Sec. 108.)
3. The Minute Book. (Sec. 120.)
4. The Register of Directors and Managers. (Sec. 144.)
5. The Register of Charges. (Sec. 88.)
6. Proper books of account. (Sec. 122.)

In addition to the above, Table A (Clause 70) provides for the use of a Directors' Attendance Book, in which is recorded the attendances of directors at board meetings. Whilst Table A does not possess statutory authority, its provisions are obligatory on those companies adopting it. Where special articles are adopted, it is usual for similar provisions to be included therein.

A Register of Debenture-holders is not specifically required by the 1929 Act, but Section 73 provides that such a Register must be open to the inspection of debenture-holders and shareholders. It is obviously necessary where a company has issued *registered* debentures, for names and addresses must be available for interest purposes, etc.

The Application and Allotments Book is illustrated on the next page, but, more usually, the applications are listed on loose sheets so as to distribute the work amongst several clerks, the sheets being subsequently bound in a book. Each sheet (which will be separately totalled) should be initialed by the chairman. At the end will be compiled a summary sheet, showing the totals of each sheet; and the final total of shares allotted will be attested by the chairman, thus—

Total 50,000 shares allotted............*7th Jany.*.....19....

............*G. Zead*................, Chairman.

Specimen folios of the Register of Members and Share Ledger are shown on pages 97 and 111.

APPLICATION AND ALLOTMENTS BOOK

ISSUE OF 50,000 ORDINARY SHARES OF £1 EACH

LEFT-HAND RULING—

Application No.	Allotment No.	Name: Surname.	Name: Christian	Address	Occupation.	Shares Applied for.	Paid on Application @ 2/6 £	s.	d.	C.B. Fol.	Shares Allotted.	Total due on Application 2/6 & Allotment 5/-. @ 7/6 £	s.	d.
1	1	*Dawes*	*Arthur*	*51 High St., Bathton*	*Chemist*	*100*	*12*	*10*	–	*1*	*100*	*37*	*10*	-
2	2	*Jones*	*David*	*25 Elm Rd., Exeton*	*Draper*	*200*	*25*	–	–	*1*	*200*	*75*	–	–
3	3	*Smith*	*Albert*	*60 Chase Rd., Winston*	*Merchant*	*750*	*93*	*15*	–	*1*	*500*	*187*	*10*	–

RIGHT-HAND RULING—

Balance Due on Allotment. £	s.	d.	Date of Payment	C.B Fol	Balance Refunded £	s.	d.	Distinctive Numbers of Shares. From	To	Reg. Mem. Fol.	Share Cert. No.	Remarks.
			19..									
25	–	–	*Jan. 10*	*12*	..	..	..	*1*	*100*	*1*	*1*	
50	–	–	,, *11*	*13*	..	..	..	*101*	*300*	*1*	*2*	
93	*15*	–	,, *11*	*13*	..	..	..	*301*	*800*	*2*	*3*	

REGISTER OF MEMBERS AND SHARE LEDGER

Name... ....*Dawes, Arthur*...................... **1.**

Address...............*51 High Street, Bathton*............... Date of Entry as a member..........*7th Jan.*, 19.... ....

Description.................. ....*Chemist* .... Date of Ceasing to be member ....

Dr. CASH ACCOUNT *Cr.*

Date Due.	Particulars.	No.	Amount £	s.	d.	Date Paid.	Particulars.	C.B. Fol.	Amount £	s.	d.
19.. *Jan. 7*	Application and Allotment .	*1*	*37*	*10*	–	19.. *Jan. 5*	Application . . .	*1*	*12*	*10*	–
						,, *10*	Allotment . .	*12*	*25*	–	–

SHARES ACQUIRED						SHARES TRANSFERRED						
Date	Allot. or Transfer No.	No. of Shares	Distinctive Numbers From	To	No. of Certificate	Date	Transfer No.	Number of Shares	Distinctive Numbers From	To	No. of Certificate	Balance of Shares held
19.. *Jan. 7*	*41*	100	1	100	1							

THE REGISTER OF MEMBERS

120. *What details must, by statute, be entered in a company's Register of Members?* (C.I.S. Inter.)

Section 95 of the 1929 Act provides that the following information shall be entered in the Register of Members—

1. Names, addresses, and occupations of the members.
2. Where the company has a share capital, particulars of shares held with their distinctive numbers, and the amount paid or agreed to be considered as paid on each share.
3. Date of entry of each person as a member.
4. Date at which any person ceases to be a member.

INSPECTION OF MINUTE BOOKS AND SHARE REGISTER

121. *A person calls at a company's office and asks to be allowed to inspect the Register of Members and the Board Meeting Minute Book. Is the secretary obliged to comply with this request? Is the matter affected in any way by the fact that the person is (or is not) a shareholder? What would you do if asked for a list of shareholders?*

By the provisions of Section 98 of the Companies Act, 1929, the secretary is bound to allow the company's Register of Members to be inspected during business hours (*a*) by any member of the company gratis, and (*b*) any other person upon payment of a fee not exceeding one shilling. The company may prescribe regulations governing such inspections, provided that not less than two hours be allowed in each day, except when the register is closed (under Sec. 99), for the preparation of dividend warrants, etc.

The right of inspection of the Board Meeting Minute Book is confined to the directors, secretary, auditors, and other authorized officials. Neither shareholders nor other persons can inspect this book without the permission of the board. (Shareholders have the right to inspect the Shareholders' General Meetings Minute Book.)

A copy of the Register of Members (or any part thereof, e.g. a list of shareholders) must be supplied to a shareholder or any other person upon payment of sixpence or such less sum as the company may prescribe for every hundred words or fractional part thereof required to be copied. Such copy

must be supplied within 10 days from the day after receipt of request therefor. No person may take copies himself without payment (*Balaghât Gold Mining Co., 1901*); and if a person inspects the Annual Return at Bush House, containing the names and addresses, the rule is that he may take notes but not copy.

[*Note.* Similar, but slightly divergent, provisions apply to Statutory Companies governed by the Companies (Clauses) Act, 1845. Section 9 provides for a Register of Shareholders; whilst Section 10 requires the compilation of a Shareholders' Address Book, which can be perused *gratis* by shareholders who are also authorized to demand copies thereof. Section 63 prescribes the keeping of a Register of Stockholders. The entry of "Notes, Minutes or Copies" in a book of Proceedings is enjoined by Section 98. Secretarial students should compare the requirements of these sections with the relative sections of the Companies Act, 1929.]

A DOMINION REGISTER OF MEMBERS

122. *When may a Company keep a Dominion Register?*

Under the provisions of Sections 103–105 of the 1929 Act, a Dominion Register may be kept by companies whose objects include the transaction of business in any of the British Dominions, India, or the Australian Commonwealth, provided that the articles authorize the keeping of such register. Notice must be given by the company to the Registrar of Companies of the situation of the office where any Dominion Register is kept, any alterations, or of its discontinuance.

The Dominion Register—which is a branch register of members resident in the Dominion—is deemed to be part of the company's Register of Members. It must be kept in the same manner as the principal register at the company's registered office. The provisions of the 1929 Act as regards inspection and copies of the register apply equally to the branch or Dominion register, and any competent Court in the Colony has the same powers as are exercisable by the High Court in England to rectify the register or deal with any other offences under the Act relating to the Register of Members.

A duplicate of the Dominion Register must be kept at the company's registered office, and the local officials of the company at the branch office must transmit copies of all entries made in the branch register; these entries must also be recorded in the duplicate register at the head office. Shares registered in the Dominion Register must be distinguished from the shares in the principal register. It is

customary for a special share certificate, sealed with a distinctive seal to be issued, and all transfers of such shares can only be dealt with at the branch office.

Transfer deeds are exempt from British stamp duty, but will be liable to the stamp duties (if any) in force in the Dominion. The shares are liable to British death and estate duties if, at his decease, the shareholder is domiciled in the United Kingdom. If, however, the shareholder is domiciled abroad, the shares are exempt from these duties.

TRANSFER OF SHARES FROM PRINCIPAL TO BRANCH REGISTER OF MEMBERS

123. *Outline the procedure for the transfer of shares from a principal to a branch Register of Members.* (C.I.S. Inter.)

The statutory authority for the establishment of a branch (Dominion) Register of Members is contained in Sections 103–105 of the Companies Act, 1929. The transfer of shares from a principal to a branch Register of Members is, however, a matter of domestic procedure which necessarily varies with different companies, and will be governed by the regulations contained in each company's articles, which must be strictly followed. Usually, the shareholder is required (i) to sign a "Letter of Request" to transfer the shares to the branch register; (ii) to surrender his share certificate; and (iii) to pay the prescribed fee (which may include postage) to the company's Dominion office. The company will, thereupon, transfer the shares from the principal register to the branch register, advising particulars to its Dominion office, for entry in their copy of the branch register. With some companies, on the transfer to the new register, the new certificate (which will record that the shares are registered in the branch register) will be issued at the company's registered office, but the more general practice is for certificates to be issued locally by the branch office, signed by the local directors and branch secretary, and sealed with the seal of the branch office. After entry upon the branch register, transfers of such shares to other persons can only be dealt with at the branch office.

Where shares are in a Dominion register they can only be transferred to persons residing in that dominion. If shares are to be transferred from, say, Melbourne to Toronto, the account in the Dominion register must be closed and transferred to the principal register; and the account is thereupon either kept

in the principal register or transferred to the branch register in Canada, if such exists.

NON-RECOGNITION OF TRUSTS

124. "*No notice of any trust, express, implied, or constructive, shall be entered on the register, or be receivable by the Registrar, in the case of companies registered in England.*" *Explain this.* (C.I.S. Final.)

The object of the above clause, which comprises Section 101 of the 1929 Act, "is to relieve the company from taking notice of equitable interests in shares and to preclude persons claiming under equitable titles from converting the company into a trustee for them." (*Buckley on the Companies Acts.*) Many companies include in their articles wider provisions to the effect that the company shall be entitled to treat the registered holders as the only persons entitled to deal with the shares.

In the event of shares being held on trust, the trustees become the shareholders, and their names are entered in the Register of Members in their personal and individual capacity.

Even where the company has constructive notice of a third party having an equitable interest in the shares, the notice may be totally ignored, and the company will not be liable if it allows the registered holder to deal with the shares. (*Simpson* v. *Molsons' Bank, 1895.*)

The only method by which a person holding an equitable interest in shares can safeguard his position is to serve the company with a "Notice in lieu of *distringas.*" (See Ques. No. 97.)

THE ANNUAL RETURN

125. *What are the necessary contents of an Annual Return?*

The Annual Return is the statement which every company is required to file with the Registrar of Companies "once at least in every year" (Sec. 108, and see also Schedule VI). This statement contains, *inter alia*—

1. A summary of share capital and shares issued, distinguishing between shares that have been allotted subject to payment wholly in cash and shares issued wholly or partially for a consideration other than cash.
2. A summary of mortgages and charges which are required to be registered with the registrar. (In total only.)

3. Particulars of directors and managers.
4. Particulars of all members of the company, the shares registered in each member's name, and also of those persons who have ceased to be members since the date of the last return.

If the list of members is not arranged in alphabetical order, it must have annexed to it an index sufficient to enable the name of any person in the list to be readily found.

The return must also state the address of the registered office of the company.

Public companies must also include a written copy of the last balance sheet, audited by the company's auditors, disclosing the general nature of the assets and liabilities, and stating how the values of the fixed assets are arrived at.

Private companies must give a certificate (1) that they have not made any offer to the public for subscription of their shares or debentures; and (2) where the total membership exceeds fifty, that such excess consists wholly of persons who are or have been in the company's employment. (Sec. 111.)

REGISTER OF PROBATES

126. *Give a ruling for a Register of Probates, with a specimen entry therein. Discuss shortly the nature of such a book.* (C.I.S. Inter.)

The Register of Probates contains a summarized record of the grants of—

(1) Probate of the wills of deceased shareholders; and

(2) Letters of Administration of the estate of intestate shareholders;

with the date of the member's death, names and addresses of the executors or administrators who are entitled to deal with the deceased member's property. When either of the above-mentioned documents is lodged for registration, particulars are entered in the Register of Probates, and also noted in the deceased member's account in the Register of Members and Share Ledger.

The object of the Register of Probates is to record the registration of documents which form the title and authority of third parties to transfer or otherwise deal with a member's shares. In addition to Probate and Letters of Administration, other documents which are received for registration include Powers of Attorney, Certificates of Death (Joint

PROBATES AND LETTERS OF ADMINISTRATION

No	Date of Registration	Shareholder		Date of Death	Date of Grant	Executor or Administrator	Address and Occupation	By whom Left	Reg. of Mem Fol
		Name	Address						
51	19.. *June 1*	*Brown Arthur*	*51 Hope St Glasston*	19 . *May 5*	19 . *May 17 (Probate)*	*Exor. Charleston, John*	*20 High St., Glasston Law Tutor*	*Smith & Co. Glasston*	*21*

POWERS OF ATTORNEY

No	Date of Registration	Shareholder		Date of P/A	Description of Power	Name of Attorney	Address	By whom Left	Reg of Mem. Fol.
		Name	Address						
	19			19					

MARRIAGE CERTIFICATES

No	Date of Registration	Shareholder		Date of Marriage	To whom Married	Address	By whom Left	Reg of Mem Fol
		Name	Address					
	19			19				

PROOF OF DEATH IN JOINT HOLDINGS

No	Date of Registration	Shareholder		Date of Death	In Joint Account with		By whom Left	Reg of Mem Fol.
		Name	Address		Name	Address		
	19			19				

LETTERS OF REQUEST OF EXECUTORS AND ADMINISTRATORS

No	Date of Registration	Shareholder		Date of Request	Executor or Administrator	Address and Occupation	By whom Left	Reg of Mem. Fol
		Name	Address					
	19..			19				

[*Note* Some companies treat the "Letters of Request" as the equivalent of a Transfer and enter them in the Register of Transfers but the more correct procedure is to enter them in a separate register as above]

Accounts), Certificates of Marriage, Orders in Bankruptcy or Lunacy, etc.; and whilst in large companies a separate register is usually kept for each class of documents, in many instances they are recorded in a separate section of the Register of Probates, etc. Specimens of the ruling of the register for each class of document are appended.

[*N.B.* Questions Nos. 99, 100, and 104 deal more fully with Probates and Letters of Administration.]

CHAPTER X

AUDITORS

THE statutory provisions respecting auditors are contained in Sections 132–134 of the Companies Act, 1929; and it is usual for the company's articles of association to contain regulations providing for the appointment of auditors in compliance with these sections. The corresponding provisions for statutory companies are found in Sections 101 to 108 of the Companies (Clauses) Act, 1845.

Balance Sheets of companies incorporated under the former Act must be signed by two directors (or the sole director), with auditors' report attached thereto. With statutory companies, the Balance Sheet must be examined by the directors and signed by the chairman. (Sec. 116.) The directors must deliver the accounts and Balance Sheet to the auditors, who are required either to make a special report thereon or simply to confirm them. Both Acts require these reports or confirmation to be read to the shareholders in General Meeting.

Auditors of statutory companies, by the provisions of the 1845 Act, must, unless some other qualification is imposed by the special Act, hold at least one share in the company. The 1929 Act, however, does not require auditors of companies to possess any share qualification. Both Acts stipulate that the auditor must not hold any other office in the company.

APPOINTMENT AND REMUNERATION OF AUDITORS

127. *By whom may the Auditors of a limited company be appointed? Mention the statutory provisions for enabling Auditors to obtain information about the company's affairs.*

128. *How are Auditors appointed and how are they remunerated?* (C.I.S. Inter.)

Every company is required, by the provisions of Section 132 of the 1929 Act, to appoint (at each annual general meeting) auditors who shall hold office until the next annual general meeting. (Directors or other officials of the company are

not eligible for this appointment; nor is a body corporate.) The auditors' remuneration is fixed by the shareholders at the meeting, though it is frequently left to the directors to decide the question, particularly when it is uncertain what amount of work will be involved. The Act, however, does not give specific power to the shareholders to delegate their power to fix the auditors' remuneration.

Where default is made in appointing auditors, the Board of Trade may, on application of a shareholder, appoint auditors and fix their remuneration.

With newly-formed companies, the directors are authorized to appoint auditors and fix their remuneration. Such auditors will hold office until the first annual general meeting, when they will be eligible for re-election. Shareholders may, however, remove them from office by resolution passed at a general meeting and, in that event, may appoint other auditors at the same meeting.

The directors may also fill any casual vacancies, should such arise; but the surviving (or continuing) auditors may act whilst such casual vacancy remains unfilled.

(As to statutory rights of auditors, see page 122.)

Statutory companies—to whom the provisions of the Companies (Clauses) Act, 1845, apply—are required to elect auditors at the First Ordinary Meeting (which must be held within one month, or other prescribed time, of the passing of the special Act), unless the special Act otherwise provides. Further, at least two auditors must be appointed who retire by rotation. Casual vacancies may be filled at any General Meeting of the company.

A CHANGE OF AUDITORS

129. *If it is desired to change a company's Auditors, what procedure must be resorted to?* (C.I.S. Inter.)

The procedure is prescribed by Section 132 of the 1929 Act, which requires that notice must be given by a shareholder of the company of the intention to nominate a person (other than the retiring auditor) to the office of auditor not less than fourteen days before the Annual General Meeting, and the company must send a copy of the notice to the retiring auditor and to the shareholders not less than seven days before the meeting.

If the Annual General Meeting is called after the above notice has been received, it will be sufficient if the notice of the intention to nominate another person as auditor is given by the company at the same time as the notice of the Annual General Meeting.

The procedure at the meeting may possibly vary, according to circumstances and the provisions of the company's articles. Usually, the motion for the re-election of the retiring auditor will be first proposed and seconded. The shareholder who gave the notice should then move an amendment proposing that the name of Mr. A B should be substituted for that of the retiring auditor. After being seconded and any necessary explanations given, the amendment should be put to the meeting and voted upon. If carried, the revised motion will be put to the meeting as the substantive motion. If the amendment is defeated, the original motion for the appointment of the retiring auditor will take its place.

THE SECRETARY'S DUTIES TO AUDITORS

130. *To what extent is a company Secretary called upon to assist the auditors? Give examples of the information and explanations he may be called upon to furnish.* (C.I.S. Inter.)

The statutory duties imposed by the 1929 Act (Sec. 134) on "the directors and officers of the company," *which includes the secretary*, are to produce to the auditors the company's books, accounts, and vouchers, and to give such information and explanation as may be necessary for the satisfactory completion of the audit.

In practice, the secretary should submit to the auditors a completed trial balance of the financial books, with *pro formâ* Profit and Loss Accounts and Balance Sheet. (With large companies, these may be prepared by the chief accountant.)

The books to be produced will, in addition to the financial books, include Minute Books, Register of Members and Share Ledger, and the Register of Mortgages. A copy of the company's memorandum and articles of association must be made available to the auditors, who will require to be satisfied that the acts of the directors and/or the company are not *ultra vires*.

Inter alia, the information and explanations to be given by the secretary (or other officials) will include—

1. Particulars of the adjustment of accounts, payments in advance, and outstanding items.
2. Where expenditure has been apportioned between capital and revenue, the basis and authority for such apportionment.
3. Facilities for inspection and verification of the company's investments and securities (e.g. share certificates, title deeds of property, etc.).
4. Particulars of the basis of valuation of the closing stock-in-trade and facilities for verification of stock-book prices.

STATUTORY DUTIES AND POWERS OF AUDITORS

131. *What are the statutory duties and powers of the auditors of a company?* (C.I.S. Inter.)

132. *What are the duties of a company secretary in regard to Annual Audit? Give the substance of the law on the Appointment and Remuneration of Auditors and the Powers and Duties of Auditors.*

Auditors' appointment and remuneration, and the secretary's duties, have been dealt with in Questions Nos. 127 and 130.

The statutory powers and duties of auditors are defined by Section 134 of the 1929 Act, and include—

(1) The right of access to the company's books, accounts, and vouchers.

(2) The right to require all necessary information and explanation from the directors and officers of the company.

(3) The right to attend any general meeting at which accounts prepared by them are laid before the company, and to make any statements they wish.

A report on the accounts and every balance sheet must be made by the auditors and submitted to the company in general meeting, such report stating whether they have obtained all necessary information and explanations, and whether the balance sheet shows, in their opinion, a true and correct view of the state of the company's affairs according to the best of such information and explanation, and as shown by the company's books.

This report must be attached to the balance sheet, and must be read at the meeting, usually by the secretary. It must also be open to the inspection of every member, although, by Section 130, all members of a public company will have received copies of the accounts, auditors' report, etc., accompanying the notice.

The auditor must satisfy himself that the acts of, and payments authorized by, the directors are *intra vires* and within the scope of the company's powers as defined by the memorandum of association. Where any serious inaccuracies or unsatisfactory matters are disclosed, they must be dealt with in the auditor's report to the shareholders.

REMOVAL OF AUDITOR

133. *At the Statutory Meeting of a company, the members find that the directors have appointed Mr. A to be auditor to the company. The majority of the members protest against this appointment. How and when can they remove him from office and appoint a new auditor in his place?* (C.I.S. Final.)

At the Statutory Meeting, no resolution can be passed unless notice thereof has been given in accordance with the company's articles, hence no action to remove Mr. A can be taken at the meeting. However, Sub-section 8 of Section 113 of the 1929 Act appears to vest the power to adjourn the Statutory Meeting in a majority of the members present. The adjournment to a convenient date may, therefore, be moved (and carried), with a view of notice being given of resolutions to be considered at the adjourned meeting removing Mr. A from his office and appointing a new auditor in his place. Notice of the resolutions should be given to Mr. A.

Alternatively, the aggrieved shareholders may, under the provisions of Section 114, requisition an Extraordinary General Meeting, at which the removal of Mr. A and appointment of a new auditor may be effected.

It is assumed that the "majority of members" quoted in the question also hold the majority of shares; otherwise their motion to remove Mr. A may be defeated upon a poll.

CHAPTER XI

PRIVATE COMPANIES

PRIVATE companies are usually those companies which have resulted from the conversion of the business of a sole trader or partnership into a limited company, the share capital being subscribed by the former owner or partners, their relatives, friends, and employees. Prior to the 1st July, 1908, when the Companies Act, 1907, came into force, there was no distinction in law between a private company and any other incorporated company ; all companies were required to register with at least seven subscribers, and the statutory requirements as to returns and compliance with various provisions of the Companies Acts applied equally to private as to public companies.

The provisions of the 1907 Act were re-enacted in Section 121 of the Consolidation Act of 1908—now Section 26 of the 1929 Act—and supplied a statutory definition and recognition of private companies, conferring upon them many privileges—which are described in this chapter—and requiring such companies to include in their articles of association certain regulations. Where a company makes default in complying with any of the statutory provisions by which it is constituted a private company, it shall cease to enjoy the privileges and exemptions conferred upon private companies, and shall be subject to the statutory obligations of a public company. In such a case the company must within fourteen days file with the Registrar a prospectus or statement; there is a penalty of £50 per day for default. (Sec. 27.)

DEFINITION AND PRIVILEGES OF A PRIVATE COMPANY

134. *What is a private limited company ? Mention the privileges possessed by such a company as compared with a public company.* (C.I.S. Inter.)

135. *Enumerate the privileges of a private company* (C.I.S. Final.)

A private limited company is defined by Section 26 of the 1929 Act as a company which, by its articles,

(a) Restricts the right to transfer its shares; and

(b) Limits the number of its members to fifty (exclusive of persons who are or were formerly in the company's employ); and

(c) Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

The privileges may be thus summarized—

1. Only two persons are required as members at the formation of the company or subsequently as compared with seven members for a public company. (Sec. 1.)

2. There is no necessity (as with public companies) to hold a Statutory Meeting or to forward the Statutory Report to the members or to deliver a Statutory Report to the Registrar of Companies. (Sec. 113.)

3. There is no necessity for the directors (a) to file a consent to act in that capacity; (b) to sign the memorandum for their qualification shares, or to sign and file a contract to take them. (Sec. 140.)

4. A "prospectus" or a "statement in lieu of prospectus" is not required.

5. Freedom from the statutory provisions as to minimum subscription before proceeding to allotment. (Sec. 39.)

6. The company may commence business immediately upon incorporation, but a public company having a share capital is unable to do so until the Registrar of Companies has issued the "Certificate entitling the company to commence business." (Sec. 94.)

7. Private companies need not circulate copies of the Balance Sheet and Auditors' Report among the members, but all members (including preference shareholders) must be supplied with copies within seven days, if demanded, at a charge not exceeding sixpence per hundred words. (Sec. 130 (2).)

8. Private companies are exempt from including in the Annual Return a written copy of the last audited Balance Sheet. (Sec. 110, sub-sec. 3.) In place thereof, the company must give a certificate that the statutory conditions entitling the company to be a private company have been observed and still continue. (Sec. 111.)

9. Public companies must have at least two directors (Sec. 139), and apparently a private company need not have any. However, in practice, a director is necessary as there is a statutory obligation for the Balance Sheet to be signed by a director. (Sec. 129 (1).)

10. Partners or employees of officers of the company may be appointed auditors. (Sec. 133 (1) (*b*).)

FORMATION OF A PRIVATE COMPANY

136. *Explain briefly the procedure for forming a private company under the Companies Acts. When may such a company commence business?* (C.I.S. Inter.)

A private company is formed by incorporation under the Companies Act, 1929, and it must include in its articles the regulations specifically imposed by Section 26. (For details, see previous question.) Further, the articles must not contain powers to issue share warrants to bearer.

Incorporation is effected by delivering to the Registrar of Companies for registration the following documents—

Memorandum of Association .	Fee stamp *ad val.* on Capital and 10s. Deed stamp.
Articles of Association . .	Fee stamp, 5s.; Deed stamp, 10s.
Statement of Nominal Capital .	Stamp duty *ad val* 10s. per cent.
Notice of Situation of Registered Office.	Fee stamp, 5s.
Statutory Declaration of Compliance with the Companies Acts (Sec. 15 of the 1929 Act)	Fee stamp, 5s.
Return of Directors and Managers	,, 5s.

Where the company takes over an existing business, a copy of the sale contract (stamped *ad valorem* according to the nature of the assets transferred and the consideration) must also be filed with the Registrar.

After inspection and examination of the documents to ascertain that they are in order, the Registrar issues the Certificate of Incorporation and the company is able to commence business immediately.

CONVERSION OF PRIVATE COMPANY TO PUBLIC COMPANY

137. *State shortly the steps by which a Private Company can become a Public Company. Draft any resolutions which you consider necessary for the purpose.* (C.I.S. Inter.)

137*a*. *What is the procedure necessary to enable a private company to become a public company where the Memorandum of Association does not forbid the change?*

The procedure is governed by the provisions of Section 27 of the 1929 Act. The necessary steps to be taken are—

1. To convene an extraordinary general meeting of the

company and pass thereat (by the necessary majorities) special resolutions—

(i) Authorizing the company to become a public company.
(ii) Deleting from the company's articles of association the articles applicable only to private companies, e.g. those articles that restrict the right of transfer, limit the total membership, and prohibit invitations to the public to subscribe for shares or debentures.

2. To file with the Registrar of Companies, printed copies of the Special Resolutions within fifteen days of their passing.
3. To file a Prospectus or a Statement in lieu of Prospectus. (Normally the latter—Schedule III.)
4. If the total number of shareholders is less than seven, the directors must arrange for the necessary increase of membership.

The resolutions may be worded as follows—

(i) That the company do now become a public company.
(ii) That Articles Nos. 21, 22, and 23 be and are hereby deleted from the company's articles of association.

[*Note.* In practice, it is desirable to adopt an entirely new set of articles.]

CONVERSION OF A PUBLIC TO A PRIVATE COMPANY

138. *Explain, in detail, the method whereby a Public Company can become a Private Company.* (C.I.S. Final.)

The Companies Act does not specify any procedure to be observed in the conversion of a public company to a private one ; but there is nothing in the Act to prevent such a conversion taking place, provided that the total membership of the company (exclusive of persons who are or have formerly been in the company's employment) does not exceed fifty.

It will be necessary for the company to convene an Extraordinary General Meeting and to pass Special Resolutions—

(i) To authorize the company to become a private company.
(ii) To delete from the articles of association the inappropriate provisions, e.g. articles relating to the issue of share warrants to bearer, public issues of share capital or debentures, and unsuitable regulations relating to the transfer or transmission of shares.
(iii) To insert in the articles of association new articles restricting the right to transfer the company's shares, restricting the total

membership, and prohibiting invitations to the public to subscribe for shares or debentures.

After these resolutions have been passed and filed with the Registrar, the company will be able to claim the privileges of a private company.

It is essential that any provisions in the articles relating to Share Warrants be deleted therefrom; and if any such warrants have been issued for them to be recalled, and cancelled, definitive share certificates being issued in their place. Clearly, it would be inconsistent with the provisions of Section 26 of the 1929 Act for a "private" company to issue Share Warrants, as the transfer of the shares they represent could not be restricted nor could the total membership be accurately determined.

THE CERTIFICATE WITH THE "ANNUAL RETURN" OF PRIVATE COMPANIES

139. *Explain the nature of the Certificate required to be filed by Private Companies under the Act of 1929.*

The certificate is of a twofold nature, viz.—

1. That the company has not since the date of the last Annual Return (if the first return "since the incorporation of the company") issued any invitation to the public to subscribe for shares or debentures of the company.

2. Where the list of members discloses the fact that the total membership exceeds fifty, that such excess consists wholly of employees of the company or of former employees, who, while in the company's employment, became, and have continued to be, members of the company.

Failure to supply these certificates will involve the company in the loss of the privileges and exemptions enjoyed by private companies. (See Sec. 111.)

CHAPTER XII

MORTGAGES AND DEBENTURES

THE system of Registration of Mortgages and Charges under the Companies Act, 1929, is of an extensive and elaborate character. The statutory provisions are contained in Sections 79–91, and their principal features are summarized in the series of questions dealt with in this chapter.

This system of registration is confined to the Companies Act, and does not apply to Statutory Companies incorporated under the Companies (Clauses) Acts, 1845, and special Acts. The 1845 Act contains Regulations for the borrowing of money on Mortgage or Bond, and the following comparison of some of the equivalent features of the two Acts reveal points of similarity and divergence—

COMPANIES ACT, 1929. (*Secs. 79–91.*)	COMPANIES (CLAUSES) ACT, 1845. (*Secs. 38–56.*)
Sec. 79 provides that particulars of certain charges shall be filed with the Registrar of Companies, and (*Sec. 82*) that the Registrar shall keep a register of such mortgages. Register open to public inspection. Fee, 1s.	No equivalent provisions.
Sec. 88. Requires company to keep a Register of Charges and enter therein particulars of all Charges *specifically* affecting property of the company, and floating charges.	*Sec. 45.* Requires company to keep a Register of Mortgage and Bonds entering particulars of number, date, amount, and names of parties.
Sec. 89. Creditors and shareholders can inspect the Register and copies of the instruments creating the mortgage or charge, gratis. Fee to other persons (to inspect Register only), 1s.	*Sec. 45.* Right of inspection confined to Shareholders, Mortgage or Bond Creditors, and any person interested in the mortgage "without fee or reward." *Sec. 55* also authorizes Mortgage or Bond Creditors to inspect Books of Account and to take extracts therefrom gratis.

Companies Act, 1929.	Companies (Clauses) Act, 1845.
Sec. 73. Register of Debenture-holders is to be open to inspection of any registered debenture-holder or shareholder. Copies of this register or the trust deed to be supplied on payment.	To statutory companies authorized by their special Act to issue Debenture Stock, the provisions of Sec. 63 as to the accessibility of the Stock Registers to share- or stock-holders will apply. See also Sec. 28 of the 1863 Act.
Sec. 75. Power to redeemed debentures.	*Sec. 39.* Power to re-borrow amount of loans paid off, subject to authority of Company in General Meeting.
A Company's Articles will determine the mode of transfer.	*Sec. 46.* Transfers of Mortgages and Bonds to be by deed.

The Companies Clauses Acts, 1863 and 1869, contain further provisions relating to the issue of debenture stock by statutory companies.

The selection of questions included in the following pages deal with the principal features of the statutory enactments and the modern practice relating thereto.

A COMPANY'S BORROWING POWERS

140. *How are the borrowing powers of (1) a Trading Company and (2) the same Company's Directors to be determined and ascertained?* (C.I.S. Inter.)

A trading company always has implied power to borrow money for purposes of trade, but it is usual for express powers to be included in the " objects clause " of the memorandum of association for the " borrowing " and " raising " of money by mortgage or the issue of debentures charged upon the company's property.

The articles of association should contain the regulations by which the " power " is to be exercised, and the borrowing powers may be vested in the company in general meeting, or in the directors. The more usual course, however, is for the directors to be authorized by the articles to borrow up to a certain limit, usually not exceeding the share capital of the company. (See Table A, Cl. 69.) For amounts in excess of the limit named, the directors are required to obtain the sanction of the company in general meeting.

Inspection of a company's memorandum and articles of association will, therefore, be necessary to ascertain and

determine the nature and limit of the company's borrowing powers, and the extent to which the directors are authorized to act upon their own responsibility.

THE NATURE OF DEBENTURES

141. *Explain, shortly, the nature and general characteristics of Debentures.* (C.I.S. Inter.)

The term "debenture" ordinarily means a "document which either creates a debt or acknowledges it"; and, although this does not imply that the assets are charged as security for the repayment of the debt, yet it is a common practice for such a charge to exist.

The different classes of debentures may be thus summarized:

1. Simple or "naked" debentures given under the seal of the company and without any charge upon the company's assets. The holders are simply ordinary unsecured creditors.

2. Mortgage debentures which themselves give a charge upon the company's assets and contain conditions under which the charge is to be enforced.

3. Mortgage debentures which are secured by a trust deed in which the property is conveyed to the trustees on behalf of the debenture holders, the trust deed containing the terms and conditions on which the property is to be held in trust and the circumstances in which the charge can be enforced.

In either (2) or (3), the charge may be—

(*a*) A fixed charge upon certain property;

(*b*) A floating charge upon the assets, present and future; or

(*c*) A combination of a fixed and floating charge.

A fixed charge usually covers the immovable (fixed) property, i.e. Land and Buildings, etc.; whilst a floating charge covers the circulating (changing or floating) assets, i.e. stock-in-trade, book debts, and investments. The company cannot deal with property covered by a fixed charge, but it is free to use, in the ordinary course of business, the assets covered by a floating charge until it defaults in the observance of the conditions imposed by the mortgage debenture or trust deed. In that event a receiver or manager usually is appointed on behalf of the debenture holders.

Debentures may be issued either as Registered Debentures or as Debenture Bonds to Bearer. The former are made out in the name of the registered holders and are transferable by

endorsement on the debenture, upon the usual form of transfer being executed. In this case a Register of Debenture Holders is necessary, similar to a share register. The debenture and the completed transfer are lodged with the company; after examination, the debenture will be endorsed with the name of the transferee and returned to the new holder, whilst the transfer form will be retained by the company. Repayment at maturity is made only to the registered holder.

Debenture Bonds to bearer (which have coupons attached for periodical payments of interest) are " negotiable instruments," as they are transferable by mere delivery, and a *bona fide* transferee for value obtains an indefeasible title " free from the equities."

All Debentures, Trust Deeds, and Transfers of Registered Debentures are subject to stamp duty, *ad valorem*, according to their nature. As a formal document of transfer is not required for Debenture Bonds to Bearer, they are liable to a correspondingly higher rate of stamp duty.

THE SYSTEM OF REGISTRATION

142. *What Mortgages and Charges must be registered with the Registrar of Joint Stock Companies, and what in a company's own Register of Mortgages?* (C.I.S. Inter.)

143. *Certain charges created by a Joint Stock Company require registration with the Registrar of Joint Stock Companies. Enumerate those charges, and state the period within which registration is necessary. What is the effect of failure to register such a charge?* (C.I.S. Final.)

Section 79 of the 1929 Act provides that particulars of the following mortgages and charges shall be registered with the Registrar within twenty-one days of their creation—

(*a*) A charge for the purpose of securing any issue of debentures.
(*b*) A charge on uncalled share capital of the company.
(*c*) A charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale.
(*d*) A charge on land, wherever situate, or any interest therein.
(*e*) A charge on book debts of the company.
(*f*) A floating charge on the undertaking or property of the company.
(*g*) A charge on calls made but not paid.
(*h*) A charge on a ship or any share in a ship.
(*i*) A charge on goodwill, on a patent or licence under a patent, on a trade mark or on a copyright or licence under a copyright.

Failure to register the prescribed particulars renders the mortgage or charge void against the liquidator and any creditor of the company. The mortgagee thus loses his "security" which, in a liquidation, he would be required to deliver up to the liquidator, and rank for repayment as an unsecured creditor. On the mortgage becoming void through non-registration, i.e. on the twenty-second day after its creation, the money secured becomes immediately payable. (Sec. 79, sub-sec. 1.) But registration may be effected by any interested person, and the fees recovered from the company. (Sec. 80.)

Section 85, however, authorizes the Court, where the omission to register is "due to inadvertence or some other sufficient cause," to extend the time for registration "on such terms and conditions as seem to the Court just and expedient." In such instances, an Office Copy of the Court's Order must be filed with the Registrar with the prescribed particulars of the Mortgage.

Default in effecting registration or complying with any other requirement of the Act renders the company, and every officer who "knowingly and wilfully permits such default," liable to fines and penalties.

The statutory provisions for the company's own register are contained in Section 88, which states that—

> "Every limited company shall keep at the registered office of the company a Register of Charges, and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company . . ."

and it therefore appears that this register should include particulars of EVERY MORTGAGE OR CHARGE created by the company, irrespective of whether such mortgage or charge requires registration under Section 79.

Apparently, the intention of the legislature was that the company's own register should contain a complete record of the secured creditors of the company, with details of the property charged, and that this record should be available for the information (and protection) of every member and creditor of the company. Thus, the deposit under a Memorandum of Deposit and Charge of investments or negotiable instruments, with a bank as security for a temporary overdraft, appears to call for entry in the company's own register, although such a deposit is exempt from registration, under Section 79, with the Registrar of Companies.

Failure to enter particulars of the mortgage or charge in the company's register does not affect its validity (*Wright* v. *Horton, 1887*), but the company's officers are liable to penalties for "knowingly and wilfully authorizing or permitting such omissions." (See Sec. 88, sub-sec. 2.)

ISSUE OF DEBENTURES TO A BANK

144. *A company proposes to borrow £10,000 from its bankers and to issue to the nominees of the bank, as security for the repayment of the loan, ten First Mortgage Debentures of £1,000 each. Outline the procedure and draft the necessary resolutions.* (C.I.S. Final.)

Assuming that the company's memorandum of association contains authority to borrow and raise money upon security (i e. Mortgage Debentures), and that the articles vest the power to exercise that authority in the directors, the procedure will be as follows—

1. The directors will make the necessary arrangements with the bank as to the date of the advance, rate of interest payable, and the period of the loan.

2. At a duly convened board meeting, pass the following resolutions—

That the tentative arrangements with The Thames Bank, Limited, for the advance to this company of £10,000 for *x* years upon the security of First Mortgage Debentures, bearing interest at *y* per cent per annum, payable half-yearly on 30th June and 31st December in each year, and containing a charge upon the undertaking of the company and all its assets present and future, be and the same are hereby approved.

That the terms and conditions of the draft form of First Mortgage Debenture Bonds, submitted to this meeting and initialed by the chairman, be and the same are hereby approved.

That ten First Mortgage Debenture Bonds to be numbered 1 to 10, each for £1,000, be issued to Arthur Wain and Andrew Cash, of 1 Lombard Street, E.C.3, in the City of London (the nominees of The Thames Bank, Limited), and that the common seal of the company be duly affixed thereto.

3. The Debentures must be sealed, stamped with the requisite stamp duty, and delivered to the bank. The bank will then credit the company's current account with the amount of the loan, viz., £10,000.

4. Particulars of their issue and one of the bonds must be delivered to the Registrar of Companies.

5. Entries must be made in the company's Register of Mortgages and Charges of the issue of the debentures, to whom issued, and particulars of the property charged. A

copy of one of the debentures must be kept at the company's office for inspection when required.

[*Note.* In practice, bankers rarely make advances for long periods, yet the form of question set by the examiner seems to indicate a permanent loan. The more usual custom is for fluctuating advances (the company increasing or reducing the loan as trade requires at will) up to an agreed limit, bearing interest at rates varying with Bank Rate, and Mortgage Debentures are deposited as collateral security. Section 75 (4) of the 1929 Act relates to this practice.]

PROCEDURE FOR CREATION OF DEBENTURES

145. *Describe the procedure for the creation of a Debenture containing a floating charge. What is a Floating Charge?* (C.I.S. Inter.)

The memorandum of association must authorize the borrowing or raising of money on security, and the articles must contain regulations governing the creation of the debentures. The power may be vested in the directors entirely, or subject to the sanction of the company in general meeting by means of an Ordinary, Extraordinary, or Special Resolution.

Acting in accordance with the articles (and, where necessary, the shareholders' sanction), the directors, at duly convened board meetings, will decide upon the terms of the prospectus, advertise and issue it to the shareholders and public, and arrange for the appointment of trustees. The prospectus must be filed with the Registrar.

Allotments will be made in accordance with the applications and "scrip certificates" issued to the allottees. The "scrip" will be exchanged for the definitive debentures or debenture bond when the latter are ready and the allottees have paid in full. Particulars of the debentures, together with the instrument creating the charge, or the Trust Deed (if any) and one of the debentures must be filed with the Registrar. Particulars must also be entered in the company's Register of Charges. Details of the issue to individual holders will be recorded in the Register of Debenture Holders.

FLOATING CHARGE

A Floating Charge is an equitable mortgage or charge upon a company's property generally to secure the repayment of moneys advanced (usually upon Mortgage Debentures). The charge is "floating" or "suspended" until the happening of

certain events named in the Mortgage Deed, e.g. the company ceasing to carry on business, failure to pay interest, etc., when the charge "crystallizes" and attaches to the property. In the meantime, the company has full power to deal with the assets in the ordinary way of business; and, accordingly, the nature and value of the assets will vary from time to time. Any floating charge created within six months of the commencement of a winding up is invalid, except as to the amount of any cash paid to the company at or after the time when the charge was created, unless the company was then solvent. (Sec. 266.)

THE DEBENTURE-HOLDER'S POSITION

146. *A accepts Debentures of a company secured by a Floating Charge. What are the risks of his position* (a) *on the appointment of a receiver on behalf of the debenture-holders;* (b) *on a liquidation supervening?* (C.I.S. Final.)

The risks of A's position will depend upon the nature of the debentures held by him. If they are "naked" debentures, he will rank simply as an ordinary creditor in either (*a*) or (*b*).

Assuming that his debentures are Mortgage Debentures and are part of those debentures for which the receiver is acting on behalf of the holders, under (*a*) he will rank as a fully-secured creditor, and under (*b*) he will be in a similar position; but if his debenture has been issued less than six months from the date of the commencement of the winding up, his security will be invalid (unless it is proved that the company was solvent immediately after the creation of the charge), except to the amount of any cash paid to the company and interest thereon at 5 per cent per annum.

All Mortgage Debentures (excepting where they form part of a series, which by the terms of issue are all to rank *pari passu*) fall due for repayment in order of their creation, and thus, if any earlier-dated mortgage debentures exist, A's debentures will only rank, in either (*a*) or (*b*), after the earlier ones have been fully satisfied.

Under Section 79 of the 1929 Act, particulars of debentures, being either a mortgage or charge upon certain properties, must be registered with the Registrar of Companies; and if A's debentures—being of this nature—have not been so registered, under both (*a*) and (*b*) his security will be void.

RE-ISSUE OF REDEEMED DEBENTURES

147. *What statutory provisions are there as to the re-issue of Redeemed Debentures?* (C.I.S. Final.)

The statutory provisions are contained in Sec. 75.

Unless there are provisions to the contrary, a company is deemed to have the power (and to always have had such power) of keeping redeemed debentures alive for the purposes of re-issue, and, when re-issued, the persons acquiring such debentures shall have the same rights and priorities as if the debentures had not previously been issued.

Where, however, the company's articles or the conditions of issue expressly otherwise provide, or where the debentures have been redeemed in pursuance of an obligation on the company (not being an obligation enforceable only by the debenture-holder), there is no authority to re-issue redeemed debentures.

Any debentures so re-issued, or the issue of another debenture in the place of the redeemed debentures, shall be treated as a new debenture for the purposes of stamp duty, but they are not to be treated as a new issue for the purpose of limiting the total amount or number of debentures issued.

Where a company deposits debentures with a banker or other persons as collateral security for advances on current account from time to time, the debentures are not to be treated as having been redeemed by reason of the account ceasing to be in debit whilst the debentures remained so deposited.

When a company has power to re-issue debentures which have been redeemed, the company's balance sheet must include particulars regarding the debentures which may be so re-issued.

DISCOUNT ON DEBENTURES

148. *What disclosures must be made by a company in regard to the issue of Debentures at a discount?* (C.I.S. Inter.)

The company must disclose the amount or rate per cent paid or allowance made by the company for any commission, allowance, or discount, either directly or indirectly, to any person for any debentures issued—

1. In the particulars of mortgages or charges sent to the Registrar of Companies at the time of the registration of the debentures. (*Sec. 79.*)
2. In any prospectus, subsequently issued by the company. (*Sec. 35.*)
3. In a statement in lieu of prospectus.
4. In the next Annual Return and Summary filed after the issue of the Debentures. (*Sec. 108.*)

The total amount of the discount should also be separately shown in successive Balance Sheets until the whole amount has been written off out of profits.

REDEMPTION OF MORTGAGE

149. *A company mortgages some of its land and duly registers the mortgage. Subsequently it sells the property subject to the mortgage,* i.e. *the purchaser taking over the obligations of the company under the mortgage. Is the company thereupon entitled to file notice of satisfaction of the mortgage?* (C.I.S. Final.)

To safeguard the company's interests and to ensure the company being able to file a notice of satisfaction of the mortgage, it will be necessary for the mortgagee formally to join in the deed of conveyance transferring the property to the purchaser and for the mortgagee to give his assent to the liabilities under the mortgage deed being taken over by the purchaser. The deed should also contain a clause releasing the company from all further liability.

Section 84 of the 1929 Act provides that the Registrar may order a memorandum of satisfaction to be entered on the register on evidence being given that the debt was *paid or satisfied*. In the above instance, the company's liability under the mortgage was *satisfied* upon being taken over by the purchaser of the property.

[*Note.* There is no statutory obligation to file a "Notice of Satisfaction"; but, obviously, it is to the company's interests that it should be done. The notice of satisfaction must be accompanied by a Statutory Declaration.]

SOME CONCRETE EXAMPLES

150. *A company*

(a) *Guarantees the debentures of another company.*
(b) *Deposits with its bankers, certain bills of lading, with a memorandum charging the proceeds of a shipment.*
(c) *Creates a charge on unpaid calls.*
(d) *Pledges certain of its investments.*

Must any, and, if so, which, of these transactions be registered under the Companies Act?

Particulars of the specific requirements of the Act are given in the answers to Questions Nos. 142 and 143.

(*a*) A guarantee of another company's debentures is simply "a promise to pay" that company's debentures in certain contingencies. It is not a mortgage or charge on the company's own property and, therefore, does not call for registration under either section.

(*b*) *and* (*d*) Neither a Memorandum of Deposit and Charge on property evidenced by a Bill of Lading, nor a pledge of certain investments owned by a company, constitutes a "mortgage or charge" within the scope of Section 79, hence registration with the Registrar is not required.

(*b*) Assuming that the Bill of Lading represents an inward consignment belonging to the company, the charge should be entered in the company's register under Section 88, as it is a charge upon the company's own property. If, however, the Bill of Lading represents an outward consignment to one of the company's customers, the ownership of the goods would be vested in the customer and, in that event, registration under Section 88 is not required.

(*c*) A mortgage or charge on calls made but not paid must be registered within 21 days after its creation.

(*d*) A pledge of the company's investments appears to be a charge upon the company's property, as the investments are held by the pledgee subject to the repayment of the loan, and would thus require registration under Section 88

PARI PASSU DEBENTURES

151. *In the case of a series of Debentures ranking* pari passu, *what are the duties of a company as regards registration?* (C.I.S. Inter.)

The company, when filing particulars with the Registrar, must state—

(*a*) The total amount secured by the whole series.
(*b*) The dates of the resolutions authorizing their issue, and the date of the covering trust deed (if any).
(*c*) A general description of the property charged.
(*d*) The names of the trustees (if any) for the debenture-holders

The trust deed, containing the charge upon the company's property, must also be filed with the Registrar, or, if there is no such deed, one of the debentures. Where more than one issue is made of the debentures in the series, particulars must be given of the date and amount of each separate issue.

The computation of the twenty-one days allowed for registration starts from the date of execution of the covering trust deed or, when there is no such deed, from the execution of any of the debentures of the series.

A copy of the Certificate of Registration given by the Registrar of Companies must be endorsed on every debenture. (Sec. 83.)

CHAPTER XIII

ACCOUNTS—DIVIDENDS

Before 1929 the Acts contained little reference to accounts, but now it is laid down that every company must keep proper books of account with respect to: (*a*) all sums of money received and expended and the matters in respect of which the receipt and expenditure took place; (*b*) all sales and purchases of goods; (*c*) assets and liabilities. Proper books have not been kept if they do not show clearly the transactions and financial position; and the books must contain entries of the daily receipts and payments of cash and, where goods are dealt in, statements of annual stocktakings and (except in the case of ordinary retail sales) particulars of all goods sold and purchased, showing the buyers and sellers. A Profit and Loss Account (or Income and Expenditure Account in the case of companies not trading for profit) has to be laid before the company in general meeting not later than eighteen months after the incorporation of the company, and subsequently in every calendar year. A Balance Sheet has also to be submitted and must contain a summary of the authorized share capital and of the issued capital, the liabilities and assets, distinguishing between fixed and floating assets, and stating how the values of the fixed assets have been arrived at. Particulars of redeemed debentures which may be re-issued and of any redeemable preference shares have also to be given. The Profit and Loss Account and Balance Sheet have to be made up to a date not more than nine months before the date of the meeting, or twelve months in the case of a company with interests abroad.

Dividends are the proportions of a company's profits which are distributable to the shareholders, either by way of a percentage on the issued capital of the company or at a fixed sum per share. The manner in which these profits are divided between the members is determined by the memorandum and articles of association or, in some instances, where shares have been issued subsequent to the incorporation of the company, with certain preferential rights, by the special resolutions which created the shares.

Clauses 89 to 96 of Table A contain the regulations dealing with dividends and reserve, whilst Clauses 97 to 101 relate to the company's accounts.

Companies' articles often amplify these provisions to authorize the payment of dividends in specie; to confer greater powers on the directors with regard to reserves; and, where there are different classes of shares, to define the respective rights and priority to dividends, etc. Prima facie, dividends must be paid in cash, unless the articles otherwise provide, or the company in general meeting pass special resolutions to alter the articles so as to vary the method of payment.

The declaration of dividends is usually vested in the company in general meeting, but special articles may vest the power in the directors either with or without the sanction of a general meeting. Where the power is vested in the company, it is usual to provide that "no dividend shall exceed the amount recommended by the directors." Directors are usually authorized to declare interim dividends.

Articles of association almost invariably provide for the payment of dividends in proportion to the amounts paid up or credited as paid up on the shares; but in the absence of regulations to this effect, dividends are payable in proportion to the nominal amount of the shares. Thus, in the latter instance, a shareholder whose shares are partly paid, gets the same dividend as one whose shares are fully paid. (*Oakbank Oil Co.* v. *Crum, 1883.*)

The question as to what are net or divisible profits is often difficult, and has engaged the attention of the Courts on several occasions. Amongst the "questions" dealt with in this chapter are some relating to the underlying principles and rules for deciding what profits are available for distribution, with a reference to some of the "leading cases."

Where the articles are silent as to the powers of the directors and/or shareholders to declare dividends, it would appear that the power is vested in the shareholders. The judgment of Lord Davey in *Burland* v. *Earle, 1902,* was to the following effect—

Their Lordships were not aware of any principle which compelled a joint stock company while a going concern to divide the whole of its profits among the shareholders. Whether the whole or any part should be divided, or what portion should be divided and what portion retained, were entirely questions of internal management which the shareholders must decide for themselves; and the Court had no jurisdiction to control or review their decision, or to say what was a fair or reasonable sum to retain undivided, or what reserve fund might be properly required. And it made no difference whether the undivided balance was retained to the credit of Profit and Loss Account or carried

to the credit of a rest or reserve fund, or appropriated to any other use of the company. These were questions for the shareholders to decide, subject to any restrictions or directions contained in the articles of association or by-laws of the company.

The last sentence of the judgment emphasizes the importance of the company's own regulations.

ORGANIZATION AND PAYMENT OF DIVIDENDS

152. *Describe, in detail, how a Dividend is prepared and paid by a company.* (C.I.S. Inter.)

153. *Your company has 5,000 shareholders. How would you organize the work incidental to the payment of a dividend? Are you in favour of the amounts being printed in the Dividend Warrants? What extra work would this entail in your office?* (C.I.S. Inter.)

The directors having passed a resolution that the Transfer Books of the company will be closed for a stated period for the preparation and payment of the dividend, the secretary will send a copy of the resolution to the Secretary of the Stock Exchange, and it will also be publicly advertised.

Printed and ruled Dividend Sheets will be required on which (in the first instance) the staff will enter a complete list of the shareholders, showing the share capital held by each member. A suitable form will be as follows—

ORDINARY DIVIDEND NO. ..... OF......% PAYABLE.......... 19..

Share Led. Fol.	Warrant No.	Name.	Address.	Share Capital.	Gross Dividend.			Income Tax.			Net Dividend		
				£	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*

The final total of the share capital column must, of course, agree with the Share Capital Account in the Private Ledger. Where shareholders give instructions for payment of dividends to their bankers, particulars may be entered in the "Address" column in red ink, or, alternatively, an extra column may be provided.

Whilst the dividend lists are being prepared, the warrants will have to be printed and stamped. With new companies paying their first dividend, the design of the warrant must be approved by the directors and the company's bankers.

After the total of the share capital has been agreed, the clerks will calculate and enter in the appropriate columns against each member's name the amount of the gross dividend, income tax, and net dividend. Each sheet will be separately totalled, cross-cast, and checked. A summary sheet will be prepared on which the total of each sheet is entered, and the summary is also totalled, cross-cast, and checked.

The dividend warrants are then prepared, called over and checked to ensure accuracy and, after being signed and countersigned, enclosed in envelopes ready for post. They are then made up into packets of (say) 50, and the total checked with the total number of warrants shown on the dividend sheets. When the net total to be distributed is ascertained, it is usual to open a Dividend Account at the bank, transferring thereto the exact amount of the dividend. Within a short time there should be no balance remaining to the credit of this account. If any dividend warrants remain long outstanding, the member should be communicated with to ascertain the reason for delay.

In distributing the work amongst the members of the staff, it should be arranged that each clerk's work should be independently checked by another clerk and a record kept as the work proceeds to ensure that every detail is checked throughout.

Where a large number of dividend mandates has been received authorizing payment to bankers, much time, labour, and expense will be saved by sending to the head office of the bank concerned, the "top halves" or counterfoils of the dividend warrants, accompanied by a detailed list and one cheque for the total amount. The detailed list will state the name of the branch to which the proceeds of the individual warrants are to be paid for the credit of the respective shareholders. Stamp duty on, and postage of, separate warrants are thus saved. Arrangements must, of course, have been previously made with the bankers.

Where a large number of the "share holdings" are of similar amounts, e.g. £50, £100, etc., it may be advisable to print the net amount payable in the dividend warrants; but if the share-holdings are more varied in amounts, the cost will be prohibitive. Printing the amounts payable in the warrants would involve some extra work in calculating the number of warrants required for each amount, and in

arranging the warrants in correct order to ensure the right warrant going to each member; but a saving would be effected in the time required to "write" the warrants.

An "addressing" machine may be advantageously used, as the names and addresses can accurately and speedily be inserted in the dividend lists, the counterfoils of the dividend warrants, and the envelopes. The machine may also be used for the warrant itself, though in some quarters this is not favoured, objection being raised to the address appearing on the "cheque" portion of the warrant. Where, however, a machine adds the name and address on any part of the dividend warrant, it becomes possible to make use of "window" envelopes, the advantage being that it is impossible to enclose the dividend warrant in the wrong envelope. Usually, in a large dispatch, the envelopes are stamped by the Post Office, the certificate-receipt issued being evidence of the number actually posted.

After the dividends have been paid and all work in connection with them completed, the dividend sheets are bound up together so as to form a Dividend Book.

[*N.B.* The Finance Act, 1924, Sec. 33, provides that all payments of dividends or interest must be accompanied by a statement in writing, showing—

(*a*) The gross amount which, after deduction of the income tax appropriate thereto, corresponds to the net amount actually paid;

(*b*) The rate and the amount of income tax appropriate to such gross amount; and

(*c*) The net amount actually paid.]

THE PAYMENT OF INTEREST OUT OF CAPITAL

154. *In what circumstances, and subject to what conditions, may a company pay Interest out of Capital?* (C.I.S. Inter.)

Companies are empowered, by the provisions of Section 54 of the Companies Act, 1929, to pay interest on shares issued to provide the capital for the construction of works, buildings, or the provision of plant during the period of such construction, etc., and may charge the interest as part of the cost of the erection of the works and buildings or the provision of the plant.

The payment of the interest is subject to the following conditions—

1. Authorization of the payment by the company's articles, or by special resolution.

2. Sanction of the Board of Trade.

3. Rate of interest must not exceed 4 per cent per annum or other authorized rate (now 6 per cent).

4. The accounts of the company, from time to time, must show particulars of the share capital on which (and the rate per cent at which) the interest has been paid for the period shown in the accounts.

Such interest can be paid only during the period sanctioned by the Board of Trade, which must not extend beyond the half-year following that half-year in which the works, buildings, etc., are completed.

Statutory companies (incorporated by a special Act of Parliament and governed by the Companies (Clauses) Act, 1845) usually have similar powers conferred upon them by their special Acts.

DECLARATION OF INTERIM DIVIDEND

155. *Draft a notice announcing the Declaration of an Interim Dividend.* (C.I.S. Inter.)

THE Z Y X CO., LTD.

NOTICE IS HEREBY GIVEN that an Interim Dividend of 5%, less Income Tax, has been declared by the Directors for the half-year ended 31st March, 19. .

The Transfer Books of the Company will be closed from 2nd to 16th May, 19. ., both days inclusive, for the preparation of the Dividend Warrants, which will be posted to the shareholders on 16th May.

By Order of the Board,
V. WYSE,
Secretary.

1 FENCHURCH AVENUE,
LONDON, E.C.3. *30th April,* 19. .

DECLARATION OF FINAL DIVIDENDS

156. *Draft a Resolution to be passed at an Annual Meeting declaring a final dividend for the year on the Ordinary and 5 per cent Preference Shares of the company, a half-yearly interim dividend having already been paid on the Preference Shares.* (C.I.S. Final.)

That, in accordance with the directors' recommendations, a balance dividend of 2½ per cent, less income tax, making, with the interim dividend of 2½ per cent already paid, a total

of 5 per cent for the year be and the same is hereby declared on the Preference Shares; and that a dividend of 10 per cent, free of income tax, for the year 19.. be and the same is hereby declared on the Ordinary Shares; such dividends to be paid to those shareholders whose names appear on the Company's Register on the ....day of.......................19.....

[*Note.* If so desired, the date of payment may be stated in the Resolution, but it is sometimes omitted, the actual date being left to the discretion of the directors. The practice varies.]

THE NATURE OF INTERIM DIVIDENDS

157. *Explain the nature of Interim Dividends and the circumstances under which they can be paid.* (C.I.S. Inter.)

Interim Dividends are those dividends which are declared by the directors, and paid at intervals during the year, as a partial payment on account of the year's profits pending production of the final accounts at the end of the year. Usually, they are paid shortly after the close of the first six months of a company's financial year.

Such dividends can only be declared and paid when the company's profits are sufficient to justify the payment and the articles of association confer authority upon the directors to distribute them. Although not usually published, companies almost invariably have half-yearly accounts prepared for the directors' information before the interim dividends are declared.

Clause 90 of Table A confers this authority, and most special articles contain similar clauses.

VALIDITY OF DIVIDENDS

158. *Discuss the propositions* (a) *that dividends must not be paid out of capital; and* (b) *that dividends may only be paid out of profits.* (C.I.S. Final.)

(*a*) With the exception of the payment—in certain circumstances—of *interest* out of capital under the authority of Section 54 of the 1929 Act (see Ques. No. 154), and also the payment of *interest* on calls paid in advance as provided by Cl. 16 of Table A, the basic rule with regard to all dividends is that they shall not be paid out of capital, such payments, if made out of capital assets, being *ultra vires* and a breach of trust on the part of the directors authorizing the payment. Even where the memorandum or articles of association

authorize such a payment, or if the company passes a resolution sanctioning it, the payment would still be invalid, as it would, in effect, amount to an unauthorized and illegal reduction of capital. The directors are personally liable to replace the whole amount of any dividends so paid.

Where, however, the directors act innocently and in good faith, relying on audited accounts and a *bona fide* valuation of the assets, they are not responsible. Moreover, directors are entitled to rely upon and trust the company's officers. In the *National Bank of Wales* case, which was subsequently affirmed in the House of Lords as *Dovey* v. *Cory, 1901*, the directors relied upon the manager's statements that certain debts included in the balance sheet were good. Actually, they were bad and, if they had been written off, no dividends could have been paid. It was held that directors were not liable if they acted on the advice of persons whom they believed to be capable and honest, and the defendant director was not liable.

(*b*) With regard to the proposition that dividends may be paid only out of profits, the company's articles must be looked at to see if there are any provisions qualifying this statement. For example, where articles provide that dividends are payable out of *realized* profits, the profits must be actually received by the company and " estimated profits " must not be included in the amount available for distribution. It is a common practice for articles to provide that the directors shall, before recommending or paying dividends, transfer certain amounts to reserve to provide for future contingencies or other purposes. Such provisions must, of course, be complied with before the divisible profits can be ascertained.

Investment companies often provide, in their articles, that profits on realization of investments shall be carried to Capital Reserve Account, and that only the dividends and/or interest received on the investments shall be credited to Revenue Account and be available for distribution, subject, of course, to the current year's revenue expenditure.

Generally, " capital profits " are only available for dividend when the company's articles authorize their distribution and the profits have been realized. But a realized appreciation of the value of one capital asset must not be regarded as " profits available for dividend " without reference to the valuation or re-valuation of the other capital assets. The legal dictum in *Foster* v. *New Trinidad Lake Asphalt Co., Ltd.*,

1901, was that "the question of what is profits depends on the whole accounts fairly taken for the year, capital as well as profit and loss."

Divisible profits may be defined as the excess of current receipts over current expenditure, after replacing or making good the wastage or depreciation of the floating or circulating assets of the company. Shareholders' rights to dividend are subject to the directors' rights to make proper provision for the wastage of assets which have "depreciated" in the earning of profits. There is, however, a distinction in the wastage of Fixed Capital and Circulating Capital, and this is dealt with in the next two questions.

THE REPLACEMENT OF ASSETS BEFORE PAYMENT OF DIVIDENDS

159. *Distinguish between the terms "Fixed Capital" and "Circulating Capital" in relation to Dividends.* (C.I.S. Inter.)

160. *Distinguish Fixed Capital and Circulating Capital. In what respects is the distinction important?* (C.I.S. Inter.)

The following extract from Buckley's *Companies Acts* may be usefully quoted—

> The capital of the company at any particular moment is represented, of course, not by the money originally subscribed, but by the property bought with it and owned at that moment by the company. The author would define *fixed capital* as property acquired, and intended for retention and employment with a view to profit, as distinguished from *circulating capital*, meaning property acquired or produced with a view to re-sale or sale at a profit.

Fixed Capital may be represented by assets of a more or less permanent nature, which are repeatedly used in the earning of revenue.

Circulating Capital, on the other hand, is represented by assets which are constantly circulating and changing, both in nature and value, and they are used or consumed once only in the production of revenue. For example, land and buildings, plant and machinery, are "fixed assets"; whilst cash, book debts, and stock-in-trade are floating or circulating assets.

The distinction between these two classes of assets is important, as it has been legally held that whilst all losses of circulating capital (or, more strictly, the circulating assets)

must be made good or replaced out of profits before the payment of dividends can take place, yet, in certain circumstances, the loss of fixed or permanent assets need not be made good before the divisible profits are determined.

In *Verner* v. *General and Commercial Investment Trust, Ltd., 1894*, the dicta were—

> Fixed capital may be sunk and lost, and yet the excess of current receipts over current payments may be divided, but floating or circulating capital must be kept up, as otherwise it will enter into and form part of such excess, in which case, to divide such excess without deducting the capital which forms part of it, will be contrary to law. . . .

Generally, the commercial practice is to make good depreciation of Fixed Assets, more especially such assets as plant and machinery or buildings.

In the above-mentioned investment company's case, the company's business was to purchase investments, etc., and to borrow and lend money, and the profits resulting from dividends or interests received were distributed. The company's Revenue Account showed a credit balance available for dividends, but there was considerable depreciation in value of the investments. It was held that the company could pay the dividend.

It should be noted in this case that the investments were intended to be retained; and, in such instances, where the depreciation may be only temporary, it seems, prima facie, reasonable that the company should not be required to make good the depreciation on its investments.

In *Ammonia Soda Co., Ltd.* v. *Chamberlain and Others, 1918*, the company had made losses; but subsequently the company's land appreciated in value, and the appreciation was partly used to wipe out the losses. The company made profits in later years, which were distributed as dividends. It was sought to make the directors liable for the repayment to the company of these dividends on the ground that they had been paid out of capital. It was held that the valuation of the land was made *bona fide* and the defendant directors were not liable. In the Court of Appeal the dicta was laid down that a company was not compelled to make good losses of capital incurred in previous years before it could distribute by way of dividends the net profits of its trading.

The best example, however, of Fixed Capital which need not be replaced or maintained at its full value is one where

the capital is represented by assets of an inherently wasting nature, e.g. a gold mine. Such assets may be worked to exhaustion and dividends paid to the fullest extent; but there is no legal necessity even to create a sinking fund for the replacement of the capital, unless the memorandum or articles specially provide to that effect.

In *Stapley* v. *Read Bros.*, 1924, it was held (1) that the company need not make good losses incurred in previous years before it pays dividends out of profits of any subsequent year; and (2) that a company which had written off goodwill out of profits can write back to reserve the amount of profits so applied and utilize that reserve in extinguishing the debit balance of the profit and loss account.

CHAPTER XIV

CIRCULARS, NOTICES, AND REPORTS

One of the most important duties entrusted to the secretary is that of drafting and supervising the various circulars, notices and reports which are submitted to the Board of Directors and issued to the shareholders. These documents will be of the most wide and varied description, and comprise circulars to shareholders setting out the directors' proposals on various matters; notices of meeting and the attendant resolutions; reports of committees, etc., to the Board; the Statutory Report; and the Annual Report to the shareholders.

Whilst literary style may not be the first consideration in business documents, the phraseology used should be accurate, terse, and clear, so as to convey to the reader the exact information it is intended to transmit. Ambiguity must be rigorously avoided; where the phraseology employed imparts any sense of doubt as to the exact meaning, the usefulness of the document is heavily discounted.

Notices of Meeting are, perhaps, the most important of these documents, and it is imperative that the provisions of the company's articles are strictly complied with. This, in fact, is a salient feature.

For example, except in the case of a meeting to pass special resolutions, the length of the notice is usually determined by the articles; and where the articles stipulate that "seven days' notice at the least shall be given" without any qualifying words, it has been held that neither the day of service of the notice nor the day of the meeting can be counted in the seven days. The seven days must be seven *clear* days. (*Railway Sleepers Co., 1885.*)

Table A (Clause 42) provides for—

> "Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) . . .";

but this is qualified by Clause 103, which provides—

> "Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post."

Thus, a notice posted on the 4th may be deemed to have been served on the 5th, and a valid meeting could be held on the 12th of the same month.

It should be noted that, to pass a special resolution, it is necessary to have a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been given. It is provided, however, that if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

In the absence of provisions in the articles, a meeting of a company, other than a meeting for passing a special resolution, may be called by seven days' notice in writing.

It is essential that the provisions of the articles with regard to the convening of a meeting are strictly adhered to in all respects; otherwise the meeting is invalid, all business transacted or resolutions passed being void.

"SPECIAL" BUSINESS: ESSENTIAL FEATURES OF THE NOTICE

161. *Enumerate the chief points you would consider in preparing and dispatching a Notice of a General Meeting to discuss special business.* (C.I.S. Inter.)

The essential features of a notice convening a general meeting to discuss special business are—

1. That the nature of the business is adequately disclosed in the notice.

2. Where an extraordinary or special resolution is contemplated, that the requirements of Section 117 of the 1929 Act are complied with, viz.—

(*a*) The intention to propose the resolution as an extraordinary resolution; or

(*b*) The intention to propose and pass the resolution (in manner required for an extraordinary resolution) at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given.

3. Where it is possible to give the actual terms of the proposed resolution and, if any amendments are anticipated, to state in the notice that the meeting is convened " for the

purpose of considering and, if thought fit, of passing, *with or without modifications*, the subjoined Resolutions." It is possible to transact special business by ordinary resolution (e.g. increase of capital where Table A applies), and in such cases the ordinary resolution should appear *in extenso*. This is always essential in extraordinary and special resolutions.

It is, of course, difficult to define precisely what constitutes adequate notice of special business or to foresee what amendments may be proposed at the meeting. The special circumstances arising in each case must be taken into account, and it will be the chairman's duty at the meeting to decide whether any given amendment is within the scope of the notice convening the meeting.

In *Torbock* v. *Lord Westbury, 1902,* the notice specified a resolution that the directors' remuneration should be 40 per cent of certain profits; the resolution was amended and ultimately passed with the alteration of the percentage to 30 per cent. It was held that the reduction was within the scope of the notice. But in *Normandy* v. *Ind, Coope & Co., 1908*, the notice specified the alteration of the company's articles, but the nature of the alterations was not disclosed. The Court held that the notice was insufficient. Hence, where alterations of articles of association are concerned, it appears desirable to give textually details of the proposed new articles, revisions or alterations; or, alternatively, disclose the general nature of the alterations and afford shareholders opportunities of inspecting, prior to the meeting, copies of the new articles.

Another example which may be usefully cited is the case of *Betts & Co.* v. *Macnaghten, 1910.* The notice of the Annual General Meeting stated that the meeting was for the purpose of considering and, if thought fit, passing certain resolutions " with such amendments and alterations as shall be determined upon at such meeting." One of the resolutions proposed the appointment of three specified persons as directors. An amendment was proposed and carried that two additional specified persons should also be appointed. The company's articles provided that the number of directors should not be more than seven or less than three, but the maximum of seven was not exceeded by the additional appointments. It was held that the amendment was within the scope of the special business indicated in the notice convening the meeting.

Section 115 (1) (*b*) provides that "notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A," and this means "that Table as for the time being in force."

NOTICE OF AN ANNUAL GENERAL MEETING

162. *Draft the notice convening an Annual General Meeting of the members of a limited company, at which it is proposed,* inter alia, *to declare a dividend.*

THE Z Y X CO., LTD.

NOTICE IS HEREBY GIVEN that the Second Annual General Meeting of the members of the Z Y X Co., LTD., will be held at Salisbury House, London Wall, E.C.2, on Wednesday, 12th April, 19.., at 12 o'clock noon, for the following purposes—

1. To receive and consider the Directors' Report and audited Accounts and Balance Sheet to 31st December, 19..
2. To elect or re-elect a Director.
3. To declare a dividend.
4. To elect or re-elect Auditors and fix their remuneration.
5. Any other business.

By Order of the Board,
V. WYSE,
Secretary.

1 FENCHURCH AVENUE, E.C.3.
31st March, 19..

[*N.B.* For detailed Agenda and Minutes of the above meeting, see Ques. Nos. 183 and 184.]

NOTICE OF MEETING TO INCREASE CAPITAL

163. *A company is empowered to increase its capital with the sanction of a General Meeting. Draft the notice convening the meeting, and state carefully what steps you would take to ensure the resolution being validly passed.*

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of ZAYBEE, LIMITED, will be held at the Cannon Street Hotel, Cannon Street, in the City of London, on Thursday, the 10th day of January, 19.., at 2.30 o'clock in the afternoon, for the purpose of considering and, if thought

fit, passing with or without modification, as an Ordinary Resolution, the following Resolution—

That the capital of the Company be increased to £500,000 by the creation of 200,000 Ordinary Shares of £1 each to rank *pari passu* as regards dividend and in all other respects with the ordinary shares of the original capital of the Company.

Dated this 1st day of January, 19..

By Order of the Board,
A. BRIGHT,
Secretary.

1 FENCHURCH AVENUE,
LONDON, E.C.3.

To ensure that the resolutions shall be validly passed, the secretary should see—

1. That the meeting is a valid meeting, and that it is convened by the persons authorized in the articles, e.g. by the directors at a duly convened Board Meeting.
2. That proper notice is sent to every shareholder entitled to receive it.
3. That the notice is in the correct form and adequately discloses the nature of the business to be transacted, including such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued.
4. That the resolution is passed by the requisite majority on either a show of hands or a poll; that the chairman correctly declares the result, and that it is duly recorded in the company's Minute Book.

NOTICE OF MEETING TO ALTER ARTICLES

164. *Draft Notice of a Meeting to alter Articles of Association.* (C.I.S. Final.)

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of TEMPLARS, LIMITED, will be held at Winchester House, Old Broad Street, London, E.C.2, on Wednesday, 1st day of May, 19.., at 12.15 p.m., for the purpose of considering and, if thought fit, of passing, with or without modifications, the subjoined Special Resolutions—

That the company's Articles of Association be altered as follows, that is to say—

That the following words be and are hereby deleted from Article No. 36—

"The directors may charge a fee not exceeding two shillings and sixpence in respect of each instrument of transfer."

That the following new article, to be numbered 36A, be, and is, hereby inserted in the company's Articles of Association—

"36A. A fee not exceeding two shillings and sixpence shall be charged for the registration of each instrument of transfer, grants of probate or letters of administration, certificates of death or burial or any other document affecting the transfer of shares, stock, or debentures of the company."

By Order of the Board,
F. GEE,
Secretary.

1 LONDON WALL, E.C.2
8th April, 19 . .

[*Note.* Twenty-one days' notice must be given by the notice.]

NOTICE OF MEETING TO AUTHORIZE PAYMENT OF UNDERWRITING COMMISSION

165. *A company desires to alter its Articles by inserting a power to pay commission on shares. How is the alteration effected? Draft the necessary notice or notices.* (C.I.S. Inter.)

The alteration of the articles is effected by means of a Special Resolution passed by the requisite majority at an Extraordinary General Meeting in accordance with the provisions of Section 117 of the 1929 Act.

[*Note.* Alteration of articles is dealt with more fully in Ques. Nos. 32 to 34 and 164.]

The notice to be given may be in the following form—

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of BETA, LIMITED, will be held at the company's registered office, 1 Broad Street, London, E.C.2, on Thursday, 9th May, 19.., at 12 o'clock noon, for the purpose of considering and, if thought fit, of passing, with or without modification, the following resolution which will be submitted as a Special Resolution—

That the following new article, to be numbered 20A, be, and is, hereby included in the Company's Articles of Association—

"20A. The directors may exercise the powers conferred upon the company by Section 43 of the Companies Act, 1929, with regard to the payment of commission on shares, provided that the commission does not exceed Five per cent on the nominal amount of the shares in each case offered for subscription."

By Order of the Board,
A. BROWN,
Secretary.

1 BROAD STREET, LONDON, E.C.2.
12th April, 19..

NOTICE OF MEETING TO CONSOLIDATE CAPITAL

166. *Draw a Notice, with resolutions, for a meeting to enable a Company with a capital of £5,000 in 2s. shares to consolidate these into £1 shares and increase the capital to £10,000; and state what formalities are to be complied with to effect the desired object. The Company has power to increase its capital by Ordinary Resolution.*

NOTICE IS HEREBY GIVEN that an Extraordinary General Meeting of GLASS, LIMITED, will be held at the company's registered office, 2 London Wall, London, E.C.2, on Wednesday, 30th day of July, 19.., at 3 o'clock in the afternoon, when the subjoined Resolutions will be submitted as Ordinary Resolutions—

1. That the capital of the company (now consisting of £5,000 divided into 50,000 shares of two shillings each, fully paid) be £5,000 divided into 5,000 shares of £1 each fully paid, and that one share of the new denomination, credited with £1 per share paid up, be issued in exchange for ten of the old shares credited with 2s. per share paid up.
2. That the capital of the company be increased from £5,000 to £10,000 by the creation of 5,000 new shares of £1 each to rank *pari passu* as regards dividends and in all other respects with the newly created ordinary shares hereinbefore mentioned.

By Order of the Board,
A JONES,
Secretary.

2 LONDON WALL, LONDON, E.C.2.
21st July, 19..

Notice of the Increase of Capital and of the Consolidation must be given to the Registrar of Companies (within fifteen days of the passing of the Ordinary Resolution in the case of increase, and within one month in the case of consolidation) upon the prescribed form, which must bear a Fee Stamp of 5s. and an *ad valorem* fee stamp calculated on the amount of the increase.

The notices must include particulars with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued, and must be accompanied by printed copies of the resolutions.

A Statement of Increase of Capital must also be filed, stamped with *ad valorem* stamp duty at the rate of 10s. per cent on the increased capital.

Any copies of the memorandum of association subsequently issued must contain revised particulars of the company's capital in accordance with these resolutions.

[*Note.* Although Table A provides that consolidation and other changes in share capital mentioned in Section 50 can be by ordinary resolution, the resolution necessary—ordinary, extraordinary, or special—will be as provided in the company's articles.]

CIRCULAR ADVISING THAT SHARE CERTIFICATES ARE READY

167. *Draft a Circular advising Shareholders in a new company that Share Certificates are ready, and write a short note on procedure.*

Z Y X CO., LTD.

1 FENCHURCH AVENUE,
LONDON, E.C.3,
28th July, 19..

ISSUE OF 100,000 ORDINARY SHARES OF £1 EACH.

Dear Sir (*or* Madam),

I am directed to inform you that the Share Certificates for the above Ordinary Shares will be ready on and after 1st August, 19... They will be delivered in exchange for the Allotment Letter and Bankers' Receipts (A1 and C1) at the company's offices on any week day between the hours of eleven and three (Saturdays excepted).

If you are unable to attend at this office personally to effect the exchange, the Share Certificates will be delivered to some other person on your behalf, or sent to you by post at your risk upon receipt of a written request to that effect accompanied by the above-mentioned documents. Forms for this purpose are appended.

Yours faithfully,
V. WYSE,
Secretary.

To THE SECRETARY, *Address*..
Z Y X CO., LTD., ...
1 FENCHURCH AVENUE, E.C.3. *Date* .... 19...

Sir,

I enclose Allotment Letter and Bankers' Receipts (A1 and C1) in respect of the .... Ordinary Shares ....

standing in my name. I request you to forward the Share Certificates to me by post at my risk.

Yours faithfully,

(Signature) ..

. . . .

Address ... . .

Date 19

To THE SECRETARY,

Z Y X CO., LTD.,

1 FENCHURCH AVENUE, E.C.3.

Sir,

Please deliver my Share Certificate to .. ...
who will hand you Allotment Letter and Bankers' Receipts.
$\frac{\text{His}}{\text{Their}}$ receipt shall be a full discharge for the same.

Yours faithfully,

(Signature)

. . . .

Upon the completion of the share certificates, or on a date just preceding their completion, notices must be sent to the shareholders to the effect that such certificates will be handed over to them or their duly authorized representatives upon surrender of the receipts for application, allotment and call moneys. A specimen of a notice with attached forms of authority is given above. When these authorities are duly filled in and signed by the shareholder and presented with the receipts above mentioned, the certificates can be handed over or posted as the case may be.

Care must be taken with regard to the signing of the receipt portion of the certificate. It is important that it be signed by the shareholder, or by the person or firm to whom he gives authority to act.

These forms of authority for the disposal of the certificates, together with the certificate receipts, should be carefully filed and preserved in the order of their serial numbers.

CIRCULAR OFFERING NEW SHARES *PRO RATA*

168. *Draft a Circular to Shareholders offering for subscription new shares* pro rata *to their holdings.* (C.I.S. Final.)

THE WYE, EXE CO., LIMITED.

1 Fenchurch Avenue,
London, E.C.3
15th February, 19.

Authorized Capital, £450,000 divided into 450,000 shares of £1 each, of which 300,000 shares have been issued and are fully paid.

Further issue of 150,000 shares of £1 each at par.

Dear Sir (*or* Madam),

I am directed to inform you that in accordance with the resolution passed at the Extraordinary General Meeting held on 1st February, the company's capital has been increased to £450,000, and the directors have decided to offer the whole of the additional capital to the existing members *pro rata* to their present holdings.

This additional capital is required for the purpose of financing some considerable extensions to Plant and Buildings to enable the company to cope with the vast expansion of its business. It is confidently anticipated that the increased output of the company's products resulting from these extensions will yield substantial improvements in profits.

A Form of Application (on which is entered your present holding and the number of shares in the new issue for which you are entitled to apply) is enclosed herewith. If you wish to take up these shares, please fill up and sign the Application Form and forward the entire sheet, together with a remittance for the amount due, to the company's bankers, The Thames Bank, Limited, on or before 15th March, 19..

A Form of Renunciation and Nomination is printed on the back of the Application Form, to enable you, if you so desire, to transfer your rights to the new issue. This form must be signed by you; your nominee must then fill up and sign the Forms of Acceptance and Application, forwarding them with the necessary remittance to the company's bankers. If you wish to divide your rights, the entire form must be

lodged with the company for cancellation, and Split Letters will be issued in exchange.

The list of applications will be finally closed on 15th March, 19.., and if the specified conditions as to acceptance and payment are not duly observed, your right to participate in the issue will be absolutely forfeited and the Directors will dispose of the shares for the benefit of the company at their discretion.

Yours faithfully,
A. Exe,
Secretary.

CIRCULAR *RE* PROPOSED ISSUE OF BONUS SHARES

169. *Draft a Circular to Shareholders intimating that the Board have decided to issue Bonus Shares.* (C.I.S. Inter.)

170. *Draft a Circular to Shareholders advising them that the Directors are convening a Special General Meeting to consider resolutions to provide that a portion of the amount standing in the Balance Sheet to the credit of Ordinary Shareholders' undivided Profits Account may be capitalized and fully-paid ordinary shares issued in satisfaction.* (C.I.S. Inter.)

THE ENDWARE CO., LIMITED.

1 Fenchurch Avenue,
London, E.C.3.
1st October, 19..

Dear Sir (*or* Madam),

I am instructed by the Board to inform you that the directors have had under their consideration the desirability of bringing the company's capital more into harmony with the value of its assets.

At the present time, the authorized capital of the company is £60,000 divided into 60,000 shares of £1 each, all of which are issued and fully paid; whilst the net value of the company's assets (as shown in the last audited Balance Sheet), after deduction of all outstanding liabilities, exceeds £110,000. The amount at the credit of Reserve Fund is £50,000, and it is proposed to capitalize £30,000 of this amount by the issue of fully-paid ordinary shares to the shareholders in the

proportion of one new share for each two shares held. This will leave an amount of £20,000 at credit of reserve.

To enable these proposals to be carried into effect, the directors ask the shareholders' sanction to increase the company's authorized capital to £100,000, which, after the issue of bonus shares has been completed, will leave an amount of £10,000 in reserve for future issue.

A notice is enclosed convening an Extraordinary General Meeting, at which resolutions approving and sanctioning the capitalization of reserves, the issue of bonus shares, and the increase of capital, will be submitted to the meeting.

Forms of proxy are enclosed, which should be signed and returned to the company immediately if you are unable to attend the meeting.

Yours faithfully,
A. BLACK,
Secretary.

[*Note.* There is no such thing in Company Law as a "Special General Meeting." The phrase is probably used in this examination question to tempt candidates to make the common mistake that extraordinary resolutions are passed at extraordinary general meetings and special resolutions at so-called "special general meetings." The resolutions passed at an extraordinary general meeting can be either ordinary, extraordinary, or special.]

CIRCULAR *RE* PROPOSED MODIFICATION OF "RIGHTS"

171. *Draft a Circular to Shareholders enclosing Notices convening separate General Meetings of the holders of Ordinary Shares and Preference Shares to modify rights of Preference Shares, and explaining briefly the alteration of rights proposed.* (C.I.S. Inter.)

NAME OF COMPANY

Address and Date.

Dear Sir (*or* Madam),

I enclose herewith notices convening—

(1) A separate General Meeting of the Preference shareholders.

(2) A separate General Meeting of the Ordinary shareholders.

(3) An Extraordinary General Meeting of the Company, that is all Preference and Ordinary shareholders voting together.

These meetings, in accordance with the provisions of the company's articles of association, are being held to obtain the shareholders' sanction to the directors' proposals for the modification of the rights attaching to the Preference Shares.

It is proposed to raise the preference dividend from 5 per cent to 6 per cent per annum, and to insert a new clause in the articles revising the rights of the shareholders in a winding up. The effect of the new clause is to provide that the Preference Shares shall not be entitled to participate in the distribution of any surplus assets. In a winding up, after the Preference shareholders have been repaid the amounts paid up on their shares and arrears of dividend (if any), the whole of the remaining assets will be divisible amongst the Ordinary shareholders.

The directors trust that these proposals will receive the support of both classes of shareholders. A form of proxy is enclosed, which you are requested to sign and return to the company immediately, if you are unable to attend the meeting.

Yours faithfully,

(Signature) ....

[*Note.* The question does not state that the preference shares are cumulative, but as preference shares are deemed to be cumulative unless otherwise stated, the answer follows this rule.]

CIRCULAR INVITING APPLICATIONS FOR DEBENTURES

172. *Draft a Circular to Shareholders explaining the financial position of the company and inviting applications for Debentures.* (C.I.S. Inter.)

NAME OF COMPANY

Address and Date.

Dear Sir (*or* Madam),

In pursuance of the powers conferred upon the directors under the Memorandum and Articles of Association of the company, the directors have decided to offer for subscription £50,000 FIVE PER CENT FIRST MORTGAGE DEBENTURES at par, and I am instructed by the directors to invite your participation in this issue.

These debentures are secured by a Trust Deed containing a specific First Mortgage on the Freehold Land and Buildings,

Fixed Plant and Machinery, and also a floating charge on all the company's property and assets. A detailed prospectus is enclosed. The proceeds of this issue are required to meet the cost of the extensions of the company's works, the repayment of bankers' overdraft, and to cope with the increased expansion of trade.

In view of the exceptionally sound investment which these debentures offer, the directors have decided that applications from shareholders shall receive preferential consideration. If you desire to take advantage of this offer, you are requested to apply on the special application form enclosed and forward it, with the amount payable on application, to the company's bankers on or before ....inst.

Yours faithfully,

........................*Secretary.*

A REPORT ON AN ACCIDENT

173. *Your Company's building has partially collapsed and killed a workman, a clerk and a stranger who happened to be passing. Write a report on the occurrence.* (C.I.S. Inter.)

Address and Date.

To THE DIRECTORS,
THE BLANK COMPANY, LIMITED.

Gentlemen,

I deeply regret to inform you that a serious accident occurred at the company's works at about 2.30 this afternoon.

The foundations of the outer wall of the packing department, abutting on Main Street, suddenly collapsed, portions of the wall falling into Main Street, whilst the roof and ceiling also partially collapsed. Unfortunately, two employees,

John Smith, clerk, of 21 New Street, Metford ;

Arthur Brown, packer, of 44 Mond Street, Metford ;

and a stranger (name and address not yet ascertained), who was passing the building at the time, have been killed. Several other employees have been injured slightly, but, after receiving medical treatment, were able to proceed to their homes. Temporary barricades are being erected outside the premises and the walls shored up to prevent further collapse.

The relatives of the deceased employees have been communicated with and formal notification has been made to the

Factory Inspector, also to The Accident Insurance Co., Ltd. I will let you know the inquest date as soon as I receive intimation that it has been fixed, to enable you to arrange for the company's representation.

Yours faithfully,

.... *Works Manager.*

A REPORT ON A COMPANY'S STABILITY

174. *A company unknown to your company proposes to make large purchases from your company on extended credit, and you are sent to Bush House to ascertain its standing. Make a short report of the parts you select for the guidance of your Board.*

Address and Date.

To THE DIRECTORS,

THE BLANK COMPANY, LTD.

Gentlemen,

In accordance with your instructions, I have examined the file of The Bee Co., Ltd., at the Companies Registration Department at Bush House, and report as follows—

1. The company was registered on 1st January, 19.., with a capital of £250,000 in £1 shares, of which £100,000 was issued to the vendors in respect of the properties acquired by the company, and £130,000 was allotted for cash. The latter amount has been paid up in full.

2. The company's memorandum contains power to raise and borrow money upon security, but the articles require the directors to obtain the shareholders' sanction before any Mortgage Debentures can be issued. No Mortgages or Charges upon the company's property have been registered under Section 79 of the Companies Act, 1929.

3. No Item for Goodwill appears in the Balance Sheet. The principal features of the company's Balance Sheet are, approximately, as follows—

Liabilities.	£	*Assets.*	£
Paid-up Capital	230,000	Fixed Assets	160,000
Reserve Fund	25,000	Stock-in-Trade	75,000
Creditors	35,000	Debtors	55,000
Undivided Profits	36,000	Investments	20,000
		Cash	16,000
	£326,000		£326,000

The Stock-in-Trade appears at a large figure, and the question arises whether the company is not over-trading by carrying too much stock, yet the nature of the business necessitates a large stock of raw materials.

The undivided profits (£36,000) will be subject to payment of a dividend. Assuming that the company distributes a 10% dividend, its immediate liabilities are £23,000 + £35,000, making a total of £58,000 against liquid assets (Book Debts, Investments and Cash), totalling £93,000. Whilst this proportion is excellent, the comparative smallness of cash appears to confirm the previous remark about over-trading.

Successive Balance Sheets, however, indicate that the company is making steady progress and, seeing that there are no secured creditors, I am of the opinion that the proposed term of credit may be acceded to.

Yours faithfully,

B. Evans,

Secretary.

CHAPTER XV

AGENDA AND MINUTES

"AGENDA" has been defined as "a memorandum book in which things to be done are noted down," whilst Minute is defined as "a note to preserve the memory." In commercial and company circles, "agenda" may be more precisely defined as "a statement of the business to be discussed and transacted at a meeting."

Specimens of the agenda for directors' and shareholders' meetings are given in the succeeding pages. One copy should be supplied to each director, whilst the chairman is more usually provided with an Agenda Book, in which the business to be dealt with is entered on the left-hand page, the right-hand page being left blank for the chairman to make notes on the business transacted. Alternatively, the Agenda paper itself may be compiled in the following manner—

Item No.	Particulars.	Results.
1	Minutes of last meeting.	Approved and signed.
2	Arising out of the minutes,	Day, Forrest & Co. appointed, 10 years' agreement.
	(*a*) Report on the negotiations with Day, Forrest & Co., of Dublin, respecting the company's Irish Agency.	Terms: 7½% commission on first £10,000 of turnover, 5% on all trade over £10,000 in each year. £200 p.a. Office Expenses. D. F. & Co. to bear one-half of all bad debts. If turnover does not reach £10,000 in 3 years, company to have the right to terminate agreement.
	(*b*) Draft agreement between Arthur Eddy and the Company *re* Eddy accumulator.	Approved; instruct company's solicitors to arrange with Eddy's solicitors to prepare engrossment.

The secretary's copy of the agenda may usefully be set out in this style.

It is not customary for a detailed copy of the agenda to be supplied to shareholders at general meetings. A summarized form of the agenda at Annual General Meetings usually forms part of the notice convening the meeting, in the manner

shown in Question No. 162. For Extraordinary General Meetings, the special business to be dealt with is similarly stated in the notice of the meeting. Examples are included in Chapter XIV.

The uses and value of minutes are dealt with in Question No. 175. With regard to signature, the usual practice is for the minutes of one board meeting to be read at the next and, after obtaining the assent of the other directors to their correctness, the chairman signs the Minute Book, adding the date. The reading and approval of the minutes of shareholders' annual general meetings are sometimes deferred till the next annual meeting, but a more effective procedure is to read and approve the minutes at the next board meeting, when the matters dealt with are quite fresh in the directors' memories. It is submitted that no useful purpose is served by the twelve months' delay and, moreover, all the resolutions passed at the previous year's meeting will have long since been acted upon.

Clause 81 of Table A provides that "the directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit." Most special articles contain similar provisions. At the board meetings of many companies, discussion and debate are carried on and decisions taken in quite an informal style, the "motions" or "resolutions" being rarely "proposed" and still more rarely "seconded." The subject-matter is introduced and a suggestion made to adopt a certain course of action. Debate centres upon this, and a "resolution" may be drafted. Alteration or revision of the motion may be suggested and adopted without the formality of moving an amendment. Decisions may be taken by the chairman asking "Well, gentlemen, are we all agreed?" a formal vote of "for" or "against" being taken only where the debate has revealed a sharp cleavage of opinion amongst the directorate.

With large companies, the more formal procedure of each motion being proposed, seconded, and duly voted upon is usually in vogue. The latter procedure is usually adopted at shareholders' annual meetings, the names of the proposer and seconder of the resolutions being recorded in the General Meetings Minute Book.

To facilitate reference, the Minute Book should be paged and indexed, the subject-matter of each minute written in

the margin, and each separate minute numbered consecutively. Alternatively, the resolutions (instead of the minutes) may be numbered.

The statutory enactments relating to minutes of meetings of registered companies are contained in Sections 120 and 121 of the 1929 Act, and the corresponding provisions for Parliamentary companies in Section 98 of the 1845 Act.

MINUTES—THEIR USES AND VALUE: THE DISTINCTION BETWEEN MINUTES AND REPORTS OF MEETINGS

175. *What are Minutes, and their uses in legal or other proceedings? By whom should they be signed?* (C.I.S. Final.)

176. *What is the difference between Minutes of Meetings and Reports of Meetings? Give examples, and quote the chief enactments as to Minutes of Proceedings of Meetings and Directors.*

Minutes are the written record of the proceedings at shareholders' and directors' meetings. Section 120 of the Companies Act, 1929, requires every company to enter such minutes "in books kept for that purpose." It is necessary for separate Minute Books to be kept for shareholders' (general meetings of the company) and directors' meetings, and usually there are also separate minute books for committee meetings of the board (Table A, Cl. 70).

The chief use and value of the minutes are the facts that they (1) contain a record of the business transacted with the decisions of the directors and/or shareholders at their respective meetings; (2) are available for inspection by interested parties, e.g. the directors, secretary, auditors, and shareholders (shareholders, however, are usually allowed to inspect only the General Meetings Minute Book); and (3) can be produced as evidence.

The books containing the minutes of general meetings must be kept at the registered office of the company. Copies are to be furnished on request to members (within seven days) at a charge not exceeding 6d. for every 100 words. (Sec. 121.)

The minutes should be signed by the chairman of the meeting, or by the chairman of the next succeeding meeting; and Section 120 (Sub-sec. 2) of the 1929 Act provides that when this is done, the minutes "shall be evidence of the proceedings." In the absence of any other evidence to

the contrary, the Courts will accept the minutes as being reliable; it is therefore obvious that the minutes must be both accurate and complete. Rebutting evidence, however, may be given by parties interested should there be any inaccuracies.

Reports of meetings are similar to minutes in the aspect of recording the proceedings thereat, but the report may be verbatim or summarized, whilst minutes essentially record: (1) summarized narrations of the business discussed and transacted (Minutes of Narration), and (2) the actual wording of the resolutions passed (Minutes of Decisions). Reports chiefly consist of speeches and arguments—what is said or spoken—but minutes mainly record what is actually done, i.e. resolutions and decisions.

Moreover, reports of meetings would not be accepted by the Courts as evidence. Examples of these reports are those (1) circularized to shareholders, and (2) appearing in the public Press after annual general meetings have been held. Reports of committees of directors appointed for a special purpose (e.g. the selection of sites for branch factories) differ from minutes, inasmuch as the report may be the summary of proceedings at several meetings and, moreover, the report will probably discuss the relative advantages of several sites, containing, finally, the recommendations of the committee with their reasons in support of those recommendations. On the other hand, minutes are essentially a précis of the transactions and decisions at the board or shareholders' meetings, recording all the material features and important facts, irrelevant matters and unnecessary detail being ignored and omitted.

In addition to the provisions previously mentioned with regard to minutes of meetings, Section 120 of the 1929 Act provides, "*until the contrary is proved*," for the statutory recognition of such meetings and proceedings of which minutes are duly recorded, and for the validity of all appointments thereat of directors, managers, or liquidators.

PASSING RESOLUTIONS WITHOUT HOLDING BOARD MEETINGS

177. *The Directors of a limited company, which has adopted Table A, resolve to pass resolutions of the Board by means of Minutes signed by Directors and without holding Board Meetings. Is this competent? If not, how could the difficulty be got over?* (C.I.S. Final.)

Unless the articles contain authority to that effect, directors cannot act without meeting as a Board. Stock Exchange regulations do not allow directors to make decisions without meeting. There is no authority in Table A under which the directors can validly manage the company's business by means of minutes signed by the directors and discontinue holding Board Meetings and, indeed, the word "minute" itself implies a decision at a *meeting*. On the contrary, Clauses Nos. 81 to 88 of Table A contain precise regulations governing the proceedings and acts of the directors at board meetings.

To validate their proposals, it will be necessary for the directors to obtain the sanction of the company by means of a Special Resolution, amending the company's articles so as to authorize the directors to act without meeting as a board. The amendment of the articles is best effected by the insertion of a new article conferring this authority, and the new article must also provide that—

"A Resolution in writing, signed by all the directors, shall be as valid and effectual as if it had been passed at a board meeting duly called and constituted."

THE AGENDA OF THE FIRST BOARD MEETING

178. *Draft a brief Agenda for the first Board Meeting of either a private or a public company.*

THE Z Y X CO., LTD. (PUBLIC COMPANY)

AGENDA FOR BOARD MEETING..................19....

1. Election of Chairman of the meeting.
2. Solicitor to produce the Certificate of Incorporation of the Company.
3. Appointment of Chairman of the Company.
4. Appointment of Managing Director.
5. Appointment of Secretary.
6. Appointment of Bankers.
7. Appointment of Auditors.
8. Quorum of Directors.
9. Common Seal.
10. Purchase Agreement with Vendors.
11. Consideration of Prospectus.
12. Date of next meeting.

MINUTES OF THE FIRST BOARD MEETING

179. *Write up the Minutes of the first Board Meeting of a newly-formed Company.*

Z Y X CO., LTD.

Board Meeting held at the Company's Registered Office on Monday, 7th February, 19.., at 2.30 p.m.

Present: Mr. A. Zead, Chairman.
Mr. G. Zead, Managing Director.
Mr. E. Exe, Mr. A. Brown } Directors.
Mr. C. Day, Mr. E. Brown }
Mr. V. Wyse, Secretary.
In attendance, Mr. A. Scrivener, Solicitor.

Min. No.	Subject.	
1	Chairman	Upon the directors taking their seats, Mr. A. Zead was requested to take the chair.
2	Certificate of Incorporation	Mr. A. Scrivener produced the Certificate of Incorporation of the Company, No. 51,145, dated 1st Febry., 19..
3	Chairman	It was RESOLVED that Mr. Albert Zead be, and he is, hereby elected and appointed Chairman of the company and of the Board of Directors.
4	Quorum at Board Meetings	It was decided that, in accordance with clause No......... of the company's articles, the quorum of directors at Board Meetings should be three directors.
5	Appointment of Managing Director	It was RESOLVED that Mr. George Zead be, and he is, hereby appointed Managing Director of the Company for a period of ten years at a salary of One thousand pounds per annum plus a commission of one per cent on the net profits of the company, and that an agreement embodying these terms be prepared by the company's solicitor. (*N.B.* Mr. G. Zead did not vote on this resolution.)
6	Appointment of Secretary	It was RESOLVED that Mr. V. Wyse be, and he is, hereby appointed Secretary of the company at a salary of Five hundred pounds per annum, payable monthly, the appointment to

Min. No.	Subject.	
		be determinable upon three months' notice being given by either the company or the secretary. It was decided that an agreement to this effect be prepared by the company's solicitor.
7	Appointment of Bankers Signatures on Cheques	It was RESOLVED that The Thames Bank, Limited, of 101 Lombard Street, E.C., be, and are, hereby appointed bankers to the company; that an account be opened with the said bank and that the said bank be, and are, hereby authorized to pay to the debit of such account all cheques or other orders drawn upon the said account when signed by any one director and countersigned by the secretary.
8	Signatures on Bills of Exchange	That all Bills of Exchange, drafts, or other negotiable instruments issued or executed by the company be drawn or accepted on the company's behalf by any one director and countersigned by the secretary.
9	Endorsement of Cheques, etc.	That all cheques or other instruments requiring the endorsement of the company be endorsed by any one director or the secretary.
10		That a copy of this resolution, signed by the Chairman, be sent to the bank accompanied by specimens of the directors' and secretary's signatures.
11	Appointment of Auditors	It was RESOLVED that Messrs. Dewitt, Knowe & Co., Accountants and Auditors, be, and they are, hereby appointed Auditors to the company at a remuneration to be hereafter mutually arranged.
12	Common Seal	The Common Seal was produced for the directors' approval; and it was RESOLVED that this seal, of which an impression is affixed to these Minutes be, and is, hereby adopted as the Common Seal of the company.
13	Keys of Seal	It was further RESOLVED that a key of No. 1 lock of the seal be held by the Chairman and a key of No. 2 lock by the secretary; and that the duplicate keys be kept at the company's registered office in a sealed packet to be used in cases of emergency under the control of the Chairman or the Managing Director.

Min No	Subject.	
14	Agreement with Vendors	Mr. Scrivener produced the agreement between Messrs. Albert Zead, George Zead, and Edward Exe of the first part and the Company of the second part, being the agreement for the sale of Messrs. Zead and Exe's business to the company as a going concern as from the 1st January, 19.. The effect of the various provisions was explained to the directors by Mr. Scrivener; and it was RESOLVED that the Agreement be, and is, hereby approved, and that the Common Seal of the Company be affixed thereto. The agreement was accordingly completed, the seal being duly affixed and attested. (*Note.* Messrs. A. Zead, G. Zead, and E. Exe did not vote on this resolution)
15	Issue of fully-paid Shares to Vendor, etc.	It was decided, upon the recommendation of the company's solicitor, that the allotment of the fully-paid shares under this agreement, and the completion of the deed of conveyance to the company of the freehold premises of Messrs Zead & Exe should not take place until the company had gone to allotment and the "Certificate entitling the Company to commence business" had been received from the Registrar of Companies
16	Prospectus	The draft prospectus of the company was produced and read to the meeting Mr. Scrivener assured the directors that the whole of the provisions of the Companies Act relative to the prospectus had been fully complied with. It was RESOLVED that the prospectus be, and is, hereby approved; that the prospectus be dated 21st February, 19 ; be signed by all the directors as required by Section 34 of the 1929 Act, and that Mr. Scrivener be instructed to file one of the signed copies with the Registrar of Companies
17	Issue of Prospectus	It was further RESOLVED that upon notification being received from the company's solicitors that the prospectus had been passed and accepted by the Registrar of Companies, the said prospectus be issued to the public and be advertised twice in *The Times* and *The Daily Telegraph.*
18	Next Meeting	It was decided that the next Board Meeting should be held on Monday, 14th February, 19.. at 12 noon.

[*Note.* Preliminary meetings are, of course, held by the promoters of an intended company with the vendors, proposed directors, solicitors, and other persons; but it is not usual for minutes of these meetings to be recorded, although occasionally this is done. Obviously, such meetings are not meetings of a company or its directors.

CUSTODY OF THE KEYS OF THE SEAL. In some quarters, objection is raised to the duplicate keys being retained at the company's office; so, alternatively, they may be lodged with the company's bankers. This practice, however, may involve some delay should the use of the seal be needed in a case of emergency.

PURCHASE CONTRACTS WITH VENDORS. Under the provisions of Section 94, Sub-section 4, of the 1929 Act, all contracts made by a company are provisional only until the "Certificate entitling the company to commence business" has been received. The contracts then become binding without further formality. In many instances, "purchase" contracts with vendors are entered into (before the company's incorporation) by a trustee on behalf of the proposed company with the vendors. After allotment, a fresh contract is entered into between the trustee and the company transferring the property, etc., to the company. This method, however, has occasionally led to difficulties. In *Bagot Tyre Co.* v. *Clipper Tyre Co., 1902,* where the plaintiff company had granted a licence to an intermediary who had transferred it to the defendant company, it was held that there was no privity of contract between the plaintiffs and defendants, and the plaintiff company were unable to enforce their claim for royalties.

Another method, now widely adopted, is for an agreement to be prepared between the vendors and the company, which, for identification purposes, is initialed by the company's solicitors. Particulars are disclosed in the prospectus, but the contract is only completed after the company has gone to allotment.]

AGENDA FOR TRADING COMPANY'S BOARD MEETING

180. *Draft the Agenda Paper for a Trading Company's Board Meeting.* (C.I.S. Inter.)

181. *Draft the routine part of the Agenda Paper for a Trading Company's Board Meeting.* (C.I.S. Inter.)

Z Y X CO., LTD.

AGENDA FOR BOARD MEETING, 28TH MARCH, 19..

1. Minutes of the previous meeting.
2. Arising out of the Minutes.

(*a*) Mr. A. Zead to report the result of the negotiations with Messrs. Day, Forrest & Co., of Dublin, respecting the proposed appointment of this firm as the company's agents for Ireland.

(*b*) The secretary to produce the draft of the agreement between Arthur Eddy and the company for the grant to the company of the sole rights of manufacture and sale in the British Empire, the continent of Europe, and the United States of the " Eddy " carburettor.

3. Cash Account and Bankers' Pass Book.

4. Financial Statement—
   (*a*) Anticipated Revenue for current week.
   (*b*) Immediate Liabilities.

5. Trading Returns—
   (*a*) Sales and Deliveries for month ended 26th March, 19..
   (*b*) Unexecuted orders in hand.

6. Consider Manager's report on present stock and requirements for next six months of (*a*) Raw Materials, (*b*) Coal and Coke.

7. Report on accident at works.

8. Report of Share Transfers Committee.

9. Consider arrangements for the manufacture and sale of " Eddy " carburettor.

10. Any other business.

MINUTES OF BOARD MEETING—TRADING COMPANY

182. *Draft Minutes*—

(a) *Showing the ordinary routine work of a Board Meeting.*
(b) *Appointing a new committee of the board.*

(C.I.S. Final.)

Z Y X CO., LTD.

Board Meeting held at the Company's Registered Office on Monday, 28th March, 19.., at 2.30 p.m.

Present : Mr. A. Zead, Chairman.
Mr. G. Zead, Managing Director.
Mr. E. Exe, Mr. A. Brown } Directors.
Mr. C. Day, Mr. E. Dixon }
Mr. V. Wyse, Secretary.

Min. No.	Subject.	
19	Previous Meeting	The Minutes of the Board Meeting held on 21st March, 19.., were read, approved as being correct, and signed.
20	Irish Agency Appointment of Messrs. Day, Forrest & Co.	Mr. A. Zead reported upon his negotiations with Messrs. Day, Forrest & Co. respecting the company's representation in Ireland; and, subsequently, Mr. Arthur Day, a member of that firm, was interviewed by the Board. It was unanimously RESOLVED that Messrs. Day, Forrest & Co., of Dublin, be, and are, hereby appointed as the company's sole representatives in Ireland, subject to a formal agreement being signed by them embodying the following terms— 1. Period of agreement to be 10 years. 2. 7½% commission payable on the first £10,000 of each year's turnover and 5% on all trade in excess of £10,000 in each year. 3. One-half of any bad debts experienced by the company on orders introduced by Day, Forrest & Co. to be borne by them. 4 A yearly allowance of £200 for office expenses to be paid to Day, Forrest & Co. 5. The company to have the right of terminating the agreement at the end of three years if the yearly turnover of the agency has not reached £10,000. 6. After the termination of the agency, no commission to be payable except upon orders introduced to, and accepted by, the company prior to such termination. Mr. Arthur Day orally agreed to these terms, and the Secretary was instructed to prepare the formal agreement.
21	Agreement with A. Eddy *re* Eddy carburettor	The draft of the agreement between Arthur Eddy and the company for the sole rights of manufacture and sale throughout the British Empire, Europe, and the United States was produced and read, together with a letter from the company's solicitors stating that, in their opinion, the company's interests were fully protected. It was RESOLVED that the draft agreement be, and is, hereby approved, and that the company's solicitors be instructed to arrange with Mr. Eddy's solicitors to prepare the engrossment of the agreement for signature and sealing.

Min. No.	Subject.	
22	Cash Account	A statement of the Cash Account was produced, showing— Available balance on Current A/c £1,210 15s. 6d. Amount on Deposit . . 6,000 – – £7,210 15 6 The Bank Pass Books for current and deposit accounts were produced and examined, together with a Reconciliation Statement agreeing the cash statement with the Pass Books.
23	Financial Statement	The Financial Statement showed an anticipated revenue for the current week of £6,500, whilst liabilities accruing due were £3,000 10s. 6d. The latter accounts were passed for payment with the exception of an item for £650 due to The Speed Co., Ltd., for the new steam lorry. It was decided to hold this account over, pending further tests by the chief engineer, the lorry driver having reported difficulties in maintaining steam pressure.
24	Trading Returns	The Trading Returns Statistical Book was produced, and the figures shown were compared with the corresponding period of the previous year. The slight decrease in volume and value of the sales during the past month was considered unimportant, the output and turnover being, on the whole, satisfactorily maintained. The unexecuted orders on hand represented four months' production.
25	Factory requirements	The Works Manager's Report on the present stock and the anticipated requirements of raw materials, coal, and coke for the six months, June to December, was read. In view of the tendency of falling prices generally, it was decided not to place forward contracts, but to effect purchases from month to month as required.
26	Accident at Works	It was reported that an accident had occurred at the company's works on Friday, 25th inst., resulting in the death of one employee (Albert Worker) and injuries to ten others, five of whom were in hospital. The injured employees were progressing satisfactorily, and it was hoped that

Min. No.	Subject.	
		the five men in hospital would be able to return to their own homes in a few days. Arrangements had been made to relieve the immediate necessities of the widow of Albert Worker and the injured employees, from the Provident and Sick Fund.
27	Company's representation at inquest	The secretary stated that the inquest on the deceased employee would be held to-morrow (Tuesday), and that the company's solicitor had been instructed to attend as representing the company. Notification of the accident had been duly given to The Excello Insurance Co., Ltd.; the Factory Inspector; and Medical Officer.
28		The report was received with regret, and the Secretary was instructed to write to Mrs. Worker informing her of the directors' sympathy in her bereavement.
29	"Eddy" Carburettor Appointment of Committee to investigate Factory Extensions	The question of making arrangements for the manufacture, marketing, and sale of the "Eddy" carburettor was discussed. The Managing Director stated that, as the factory was working at practically its fullest capacity, manufacture on a comparatively small scale only could be undertaken at present. He anticipated a considerable demand for this new carburettor, and to cope with a large demand it would be necessary to make considerable extensions to the factory, for which, fortunately, the company had land available. It was RESOLVED that Messrs. G. Zead, E. Exe, and A. Brown be, and are, hereby appointed a committee to investigate the desirability of extensions to the factory; the erection of new plant therein; to obtain plans and estimates of the cost of erection; to ascertain whether sufficient labour will be available, and what further capital (if any) will be required.
30	Share Transfers	The report of the Share Transfer Committee for the month of......................19.. was read and approved.

AGENDA FOR AN ANNUAL GENERAL MEETING

183. *Draft the Agenda for a Company's Annual General Meeting.* (C.I.S. Inter.)

THE Z Y X CO., LTD.

AGENDA FOR THE SECOND ANNUAL GENERAL MEETING, to be held at Salisbury House, London Wall, E.C.2, on Wednesday, 12th April, 19.., at 12 noon.

1. The Secretary to read the notice convening the meeting.
2. The Chairman to ask the meeting whether the Directors' Report and Accounts as printed and submitted shall be taken as read.
3. The Auditors' report to be read.
4. The Chairman to—

(*a*) Address the meeting on the company's position and prospects.

(*b*) Move—

"That the Report and Accounts for the year ended 31st December, 19.., as audited and certified by the company's auditors, and now submitted to the meeting, be, and are, hereby approved and adopted."

(*c*) Call on Mr. A. Brown to second the motion.

(*d*) Invite the shareholders to discuss any points arising out of the motion.

(*e*) Reply to any questions.

(*f*) Put the motion to the meeting and declare result.

5. Mr. Charles Day to move—

"That Mr. Edward Exe be, and he is, hereby re-elected a director of the company."

Mr. Ernest Dixon to second the motion. The Chairman to put the motion to the meeting and declare result.

6. The Chairman to move—

"That the dividend recommended by the directors, viz., 15% on the Ordinary Shares for the year 19.. be, and is, hereby approved, and that the dividend be paid on 19th April, 19.., to those shareholders appearing on the Register of Members on 5th April."

7. A shareholder to move—

"That Messrs. Dewitt, Knowe & Co., of 91 Old Jewry,

E.C.1, be, and are, hereby re-elected Auditors to the company for the current year at a fee of One hundred guineas."

Another shareholder to second the motion. The Chairman to put the motion to the meeting and declare the result.

8. The Chairman to declare the proceedings at an end.

MINUTES OF AN ANNUAL GENERAL MEETING

184. *Draft the Minutes of a Company's Ordinary Annual General Meeting, including the declaration of a dividend.* (C.I.S. Inter.)

184*a*. *Draft the Minutes of a Company's Ordinary Annual General Meeting, giving care to the form of the resolutions.* (C.I.S. Inter.)

185. *Draft Specimen Minutes of an Ordinary General Meeting, recording the matters usually dealt with at such meetings.*

Z Y X CO., LTD

MINUTES OF SECOND ANNUAL GENERAL MEETING

held at Salisbury House, London Wall, E.C.2, on Wednesday, 12th April, 19.., at 12 o'clock noon.

Present: Mr. A. Zead, Chairman.
Mr. G Zead, Managing Director
Mr. E. Exe
Mr A. Brown
Mr. C. Day
Mr. E. Dixon
} Directors.
Mr. V. Wyse, Secretary.
Mr. A. Dewitt, of Dewitt, Knowe & Co. (Auditors);
and twenty-one shareholders.

Min. No.	Subject.	
35	Notice of Meeting	The Secretary read the notice dated 31st March, 19.., convening the meeting.
36	Report and Accounts	With the consent of the Meeting, the Directors' Report and Accounts were taken as read.
37	Auditors' Report	Mr. A. Dewitt, of Messrs. Dewitt, Knowe & Co. (the company's auditors), read their report upon the company's Accounts and Balance Sheet.

Min. No.	Subject.	
38	Chairman's Speech	The Chairman then addressed the meeting upon the company's position and prospects, and replied to various questions raised by members. On the motion of the Chairman,
	Adoption of Report and Accounts	seconded by Mr. Arthur Brown, it was RESOLVED that the Report and Accounts for the year ended 31st December, 19.., as audited and certified by the company's auditors, and now submitted to the meeting, be, and are, hereby approved and adopted.
39	Re-election of Mr. Exe as director	It was proposed by Mr. Charles Day, seconded by Mr. Ernest Dixon, and RESOLVED that Mr. Edward Exe be, and he is, hereby re-elected a director of the company.
40	Dividend	The Chairman then proposed, Mr. E. Exe seconded, and it was unanimously RESOLVED that the dividend recommended by the directors, viz., 15% on the Ordinary Shares for the year 19.. be, and is, hereby approved, and that the dividend be paid on 19th April, 19.., to those shareholders appearing on the Register of Members on 5th April, 19..
41	Re-election of Dewitt, Knowe & Co. as Auditors	On the motion of Mr. A. Holder, seconded by Mr. B. Goode, it was RESOLVED that Messrs. Dewitt, Knowe & Co., of 91 Old Jewry, E.C.2, be, and are, hereby re-elected Auditors to the company for the current year at a fee of One hundred guineas.
42	Vote of thanks	The Chairman having declared the business of the meeting completed, a vote of thanks was, on the motion of Mr. A. Moore, seconded by Mr. B. Smith, unanimously accorded to the Chairman and other members of the Board, to which the Chairman suitably responded.

[*Note*. If auditors are present (as they are in this case) they frequently read Auditors' Report themselves.

But auditors are generally not present, and then their Report will be read by the secretary. Section 134 (3) of the Act merely says that auditors *may* attend and "make any statement or explanation."]

CHAPTER XVI

RESOLUTIONS

"RESOLUTION" is defined by a well-known dictionary as "a declaration passed by the legislature or any public assembly." For the purposes of company secretarial work, it may be more suitably defined as "a formal declaration of the will or wishes of the company (or the directors)." Resolutions are thus composed of two classes: the resolutions of shareholders (or separate classes of shareholders) and resolutions of directors.

The Companies Act, 1929, provides that certain things can only be effected with the sanction of an ordinary, extraordinary or special resolution of the company, whilst the articles also usually require the sanction of the company in General Meeting for certain other purposes. Normally, the only method by which shareholders can express the will of the company on any subject is by means of a resolution passed (or rejected) in general meeting. Occasionally, "special" articles may provide for the written consent of directors or shareholders to be obtained, but such instances as these are comparatively rare.

The first two questions in this chapter deal with the different kinds of resolutions and invalid resolutions, the remainder dealing principally with specimen resolutions on a variety of subjects. Printed copies of extraordinary and special resolutions (as noted elsewhere) must be forwarded to the Registrar of Companies, as also must similar resolutions passed at separate class meetings.

THE DIFFERENT KINDS OF RESOLUTIONS

186. *Explain and contrast Ordinary, Special, and Extraordinary Resolutions.* (C.I.S. Inter.)

187. *Distinguish between an Extraordinary and a Special Resolution, and state what each is used for.* (C.I.S. Inter.)

1. A Resolution is a statement formally recording decisions (*a*) of the directors at a Board Meeting, or (*b*) of the shareholders at a General Meeting of the members of a company. Shareholders' resolutions are of three kinds: (1) Ordinary,

(2) Extraordinary, and (3) Special; but all directors' resolutions may be termed "simple" resolutions as they are not "ordinary" in the strict statutory sense.

Ordinary resolutions are those used for the disposal of ordinary business at annual general meetings of shareholders. As examples may be cited resolutions authorizing payment of dividends, appointment or re-appointment of auditors, and election or re-election of directors. Table A, Clause 44, states what shall be ordinary business at an ordinary (annual) general meeting. These resolutions can be passed by a simple or bare majority, either on a show of hands, or at a poll, should a poll be demanded. The articles usually provide that the chairman has a casting vote in the event of an equality of votes "for" and "against."

2. An Extraordinary Resolution is thus defined by Section 117 (1) of the Companies Act, 1929—

"A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members as, being entitled so to do, vote in person or (where proxies are allowed) by proxy at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given."

It is essential to fulfil the whole of the conditions specified in this section, otherwise the resolution is not an extraordinary resolution. For example, at an Extraordinary General Meeting at which there were twelve members entitled to vote present, eight voted for and three against the resolution, and one did not vote. The chairman's declaration "that the resolution was carried" would be invalid, *as three-fourths of the members voting, and entitled to do so*, had not voted for the resolution.

Extraordinary resolutions are mainly used in connection with the voluntary winding up of a company, for which statutory authority is provided in the Companies Act. They may also be used for other purposes where the articles authorize such use.

3. Section 117 (2) of the Companies Act, 1929, defines a Special Resolution thus—

"A resolution shall be a special resolution when it has been passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given:

"Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed

as a special resolution at a meeting of which less than twenty-one days' notice has been given."

All the requirements of this section must be fully complied with in order to obtain a valid resolution.

By the provisions of the Companies Act, 1929, special resolutions are required for the performance of many acts, of which the following are two of the most important—

(1) Alteration of the memorandum of association (change of name, extension of objects, etc.).

(2) Additions, alterations, or revisions of the articles.

Amendments (provided that they are within the scope of the notice convening the meeting) may be moved to extraordinary resolutions or to special resolutions. But care must be taken, as a material alteration without due notice of such alteration would probably invalidate the resolution.

A copy of the extraordinary or special resolutions, printed on the prescribed form, must be forwarded to the Registrar of Companies within fifteen days after the passing thereof. Printed copies of these resolutions must be attached to every set of the company's articles of association subsequently issued.

COMMITTEE OF INVESTIGATION

188. *Draft Resolution appointing a Committee of Investigation.*

That a committee be appointed to investigate the affairs of the company, and that the committee shall have a right of access to all the books, accounts, and documents of the company, with power to examine the directors, officials, and employees; that the committee shall be composed of Messrs. James Smith, Albert Clare, William Jones, and Arthur Winston, with power to add to their number; that the committee shall make and circulate amongst the shareholders a report summarizing the result of their investigation into the company's affairs; and that this meeting be adjourned to 25th October, 19.., to receive and consider the report.

INVALID RESOLUTIONS

189. *What possible grounds are there for attacking a Resolution passed by a company in General Meeting as invalid?* (C.I.S. Final.)

Resolutions passed at General Meetings are subject to attack as being invalid in the following circumstances—

(*a*) When the resolution proposes to do something which is *ultra vires* the company or which is in conflict with statute law.

(*b*) When the meeting itself is not a valid meeting, e.g. convened by an improperly constituted board meeting.

(*c*) When the provisions of the Companies Act or the company's own articles regarding the notices convening the meeting or the conduct of the business thereat are not observed.

(*d*) Where the business is "special" and the nature of the business is not fully disclosed in the notice convening the meeting.

(*e*) When the resolution is oppressive or a fraud upon the minority.

(*f*) When the resolution is not *bona fide* for the benefit of the company as a whole.

(*g*) Where an amendment or proposed amendment has been improperly excluded by the chairman of the meeting.

In *Kaye* v. *Croydon Tramways Co., 1898*, where it was proposed to sell the company's undertaking to another company, the notice convening the meeting stated that it was to be held "for the purpose of considering and, if thought advisable, of approving the terms of an agreement to be made between the two companies, being an agreement for the sale of the undertaking and assets of the vendor company."

The agreement further provided for the payment of compensation to the directors and secretary for loss of office, stating that "the directors and the secretary have agreed to retire on being paid a lump sum." This was not disclosed in the notice of meeting, but was referred to in a circular subsequently issued by the directors. The meeting was held and the resolutions passed, but the Courts decided that as the notice did not refer to the payments to the directors and secretary, it did not specify the purpose for which the meeting was called, and the resolution was invalid. An injunction was granted to restrain the company from entering into the agreement.

In *Brown* v. *British Abrasive Wheel Co., 1919*, where meetings were convened with the object of passing resolutions adding to the company's articles a new article giving the members holding the majority of the shares power compulsorily to acquire the shares of the minority, it was held that

the proposed alteration amounted to an oppression of the minority, and must be restrained.

[*N.B.* See also the case *Jonas* v. *Orders and Handford SS. Co.*, referred to in Ques. No. 112.]

FILLING A CASUAL VACANCY ON THE BOARD

190. *Draft a Resolution of directors to appoint a director to fill a casual vacancy on the Board.* (C.I.S. Inter.)

That Mr. Arthur Brown be, and he is, hereby appointed a Director of the company in the place of Mr. Samuel Smith (who has resigned) for the remainder of the period for which Mr. Smith was elected, viz., until the Annual General Meeting to be held in 19...

BORROWING POWERS, ALLOTMENT OF SHARES

191. *Draft Resolutions (1) extending Directors' powers to borrow, (2) Allotting Shares.* (C.I.S. Inter.)

1. That the borrowing powers vested in the Directors of the company be and are hereby increased by the sum of £50,000 over and above the amount at present authorized, and that such borrowing powers be exercised from time to time as the Directors may determine.

2. That the number of shares entered in the column headed "Shares Allotted" of the Application and Allotment Sheets against the name and address of each applicant, be, and the same are, hereby allotted to each applicant, making a total allotment of   shares, and that a Letter of Allotment stating particulars of the shares allotted, with the amount payable on allotment, be sent to each allottee.

And in those instances where no number of shares is entered in the "Shares Allotted" column against the applicant's name, that no allotment be made, and that the application money be returned to each applicant with a Letter of Regret.

INTERIM DIVIDEND, CALL, COMMITTEE, SEALING CONTRACT

192. *Draft Resolutions (1) declaring an Interim Dividend; (2) making a Call; (3) appointing a Committee; (4) authorizing the Sealing of a Contract.* (C.I.S. Inter.)

1. That an interim dividend of 3 per cent (less income tax) be, and is, hereby declared upon the Ordinary Shares of the

company, payable on 1st day of June, 19..; that such dividend be payable to the shareholders registered in the company's books on 31st May, 19..; and that the Transfer Books of the company be closed from 24th May to 31st May, 19.., both days inclusive.

2. That a Call of Five shillings per share be made upon the Ordinary Shares (Nos. 1 to 100,000) of the company, such call to be payable on 1st December, 19.., to the company's bankers, The Thames Bank, Limited, Lombard Street, E.C.; and that the Call Letters be issued to the shareholders on 1st November, 19...

3. That Messrs. Reginald Zead, Arthur Wyse, and George Exe be, and they are, hereby appointed a Committee of the Directors, with power on behalf of the Board to deal with the business of transfers and the issue of share certificates in connection therewith, using the company's seal for that purpose. That the committee shall elect a chairman among themselves, and that two directors shall form a quorum. That a report of the transactions of the committee shall be submitted to each Board Meeting.

4. That the contract between the company and The Standard Building Co., Limited, for the erection of a branch factory at Bathtown at a total cost of Five thousand pounds be and is hereby approved; and that the common seal of the company be affixed thereto.

ISSUE OF PROSPECTUS, CONVENING EXTRAORDINARY GENERAL MEETING

193. *Draft Directors' Resolutions (1) to issue Prospectus; (2) to call an Extraordinary General Meeting.* (C.I.S. Inter.)

1. That the prospectus of the company which has been considered and approved by the Directors at this meeting be dated .... 19.., and be signed by all the directors, and that a signed copy be filed forthwith with the Registrar of Companies; and further, that immediately after the prospectus has been accepted by the Registrar, the prospectus be advertised twice in *The Times*, *The Daily Telegraph*, and *The Financial News*; and that copies be issued to the company's bankers, brokers, and the public generally.

2. That an Extraordinary General Meeting of the members

of the company be held on 25th inst. at the company's registered office, at 12 noon, for the purpose of considering the desirability of increasing the share capital of the company from £100,000 to £200,000, and to pass an Ordinary Resolution sanctioning such increase. Further, that the secretary be, and he is, hereby instructed to issue the notices convening the meeting to the shareholders on 10th inst.

INCREASE OF CAPITAL, ISSUE OF DEBENTURES

194. *Draft the following Resolutions of a company (1) to increase Capital, (2) authorizing the issue of Debentures.* (C.I.S. Inter.)

1. That the capital of the company be increased to £100,000 by the creation of 50,000 new Ordinary Shares of £1 each to rank *pari passu* as regards dividends and in all other respects with the original capital of the company, and that such new shares be offered to the members of the company in proportion to their holdings, and that the directors be authorized to dispose of any such shares which are not taken up by the members to such persons and on such terms as they may deem expedient in the interests of the company.

2. That the directors be, and they are, hereby authorized to borrow the sum of £50,000 and to issue at par, as security for the loan, First Mortgage Debentures in the denominations of £50 and £100 each up to the total of £50,000, bearing interest at the rate of 4 per centum per annum, payable half-yearly, on 30th June and 31st December in each year, and charged upon the undertaking of the company and all its assets, present and future.

APPOINTING COMMITTEE, ADOPTING COMMON SEAL, CUSTODY OF KEYS OF SEAL

195. *Draft Resolutions* (a) *to appoint a Committee;* (b) *to adopt a Common Seal;* (c) *to determine custody of Keys of Seal.*

(*a*) That (subject to any future resolution of the board) Messrs. Arthur Axwell and Bertram Binns be, and are, hereby appointed a Committee of the Directors to act during the intervals between Board Meetings, with power to exercise any of the powers of the Directors with regard to the

approval and signature of agreements or contracts arising in the ordinary course of the company's business, and to affix thereto the company's seal. Further, that all business transacted by the Committee be reported to the Directors at the next succeeding Board Meeting.

(*b*) That the common seal, of which an impression is affixed to the first page of the Board Meeting Minute Book be, and is, hereby approved and adopted as the common seal of the company.

(*c*) That a key of No. 1 lock to the company's seal be kept by Mr. George Zead, the chairman of the company; that a key to No. 2 lock be retained by the secretary; and that the duplicate keys of No. 1 and No. 2 locks be handed to Mr. Albert Zead and Mr. Edward Exe respectively.

REMUNERATION OF AUDITORS

195*a*. *Draft a form of resolution re-appointing auditors at a general meeting where no change is to be made in their remuneration.*

That Messrs. A and B be and they are hereby re-appointed Auditors of the Company until the next ordinary meeting at the same remuneration as before, namely, —— guineas.

CHAPTER XVII

PROCEDURE AT MEETINGS

THE procedure at meetings is perhaps one of the most important of the practical and technical matters with which company secretaries have to deal. So wide is this subject, that separate chapters have been devoted to Agenda and Minutes, Resolutions, Votes and Voting procedure, this chapter dealing more particularly with the different kinds of meetings, secretarial duties in connection therewith, and proceedings thereat.

Statutory enactments relating to the meetings of limited companies are contained in Sections 112 to 121 of the Companies Act of 1929. These enactments are supplemented by the regulations of a company's articles of association. The clauses in Table A applicable to company meetings are Nos. 39 to 63, whilst notices of meetings are dealt with in Nos. 103 to 107. There are also numerous references in Table A to board meetings and committees of the board. For statutory or Parliamentary companies, the corresponding regulations are contained in Sections 66 to 80 of the Companies (Clauses) Act, 1845.

Preparation for, and proceedings at, meetings provide duties which occupy a very large portion of the company secretary's time. The preparatory work for directors' meetings often includes summarized reports on the company's business; the collation of various documents and other information which will be required at the meeting; whilst the proceedings at the meeting will provide the secretary with various instructions and duties. Shareholders' meetings also bring additional duties, notably the preparation and issue of notices, proxy forms, etc., and the preparatory work for the meeting; whilst the shareholders' decisions on the directors' recommendations may result variously—according to circumstances—in the preparation, issue and payment of dividends, the issue of new capital, as well as the compilation and filing of the appropriate returns with the Registrar of Companies.

Many changes in the law of meetings were made by the Companies Act of 1929, and students for the various examinations in the subject will be well advised to bring their knowledge up to date by a close study of the following pages.

GENERAL MEETINGS

196. *Mention and briefly explain the main purpose of the various Statutory Meetings of members of a limited company.* (C.I.S. Inter.)

197. *For what General Meetings of a company is provision made by the Companies Act? State shortly the object of each and the statutory provisions relating thereto.* (C.I.S. Inter.)

The Companies Act provides for the following General Meetings of the members of limited companies—

1. The Statutory Meeting, which, in accordance with the provisions of Section 113, must be held within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business. (See Ques. Nos. 41–44 for further particulars.)

2. Ordinary General Meetings. Section 112 provides that a general meeting shall be held once at least in every calendar year, and not more than fifteen months after the last preceding general meeting. The business usually transacted at this meeting consists of—

(*a*) Consideration of the Balance Sheet and Accounts, the Directors' and Auditors' Reports.

(*b*) The disposal of the available profits.

(*c*) The election or re-election of directors.

(*d*) The election or re-election of auditors and the fixing of their remuneration.

Special business may also be transacted if the notice convening the meeting adequately discloses the general nature of such business; provided that there is nothing in the company's articles confining special business to Extraordinary general meetings.

3. Extraordinary General Meetings. All meetings of the company other than the Ordinary General Meeting are termed "Extra"-ordinary general meetings. (See Table A, clause 40.) These meetings may be convened (1) by the directors, in accordance with the articles or upon the shareholders' requisition; and (2) by the members, on the failure of the directors to comply with the requisition. Special business will be transacted at these meetings, of which the general nature must be clearly and fairly disclosed in the notice convening the meeting. When extraordinary or special resolutions are to be submitted, the provisions of Section 117 of the 1929 Act must be complied with. (See Ques. No. 186.)

4. Class Meetings. Where a company has more than one class of shareholders, separate class meetings must be convened of each class when any proposals affecting their respective rights and privileges are put forward. (See Sec. 153 of the 1929 Act; also Table A, clause 3.)

CONDITIONS PRECEDENT TO VALID MEETINGS

198. *What are the various kinds of Meetings held by a company; and what are the conditions attaching to each as to Notice, Quorum, Business transacted, and Voting?* (C.I.S. Final.)

The preceding question deals with the various kinds of company meetings, their main purposes, and the business transacted thereat.

In the absence of provisions in the articles, a meeting of a company, other than a meeting for the passing of a special resolution (for which twenty-one days' notice is required), may be called by seven days' notice in writing. Table A provides for seven days' notice at the least (exclusive of the day of service of the notice, but inclusive of the day of meeting).

The Quorum and Rules for Voting are usually determined by the articles. In the absence of provisions therein, two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than 5 per cent in number of the members of the company, may call a meeting. (Sec. 115 (1) (*c*).) In the case of a private company two members, and in the case of any other company three members, personally present, will be a quorum. (Ques. Nos. 219 and 220 deal fully with votes and voting powers.)

PROCEDURE FOR CONVENING GENERAL MEETINGS AND THE REQUISITION OF AN EXTRAORDINARY GENERAL MEETING

199. *How are General Meetings of Companies summoned? What is the procedure for convening of Extraordinary General Meetings on requisition of shareholders?* (C.I.S. Final.)

200. *Give the substance of Section 114 of the Companies Act, 1929, on the convening of an Extraordinary General Meeting on the requisition of shareholders.*

Shareholders are summoned to attend general meetings by means of notices issued by the Secretary (or other duly appointed officer) in accordance with a resolution, convening the meeting, passed by the directors at a Board Meeting, validly called and constituted. The provisions of the company's articles as regards length of notice, manner of service, etc., must be complied with, and the notices must be posted to the members at the addresses registered in the company's books.

Where share warrants to bearer have been issued, the articles usually provide that the holders may attend and vote at meetings upon depositing their warrants at the company's registered office within a stated period for examination. For this purpose, it is customary for the notice of meeting to be advertised in certain newspapers.

Section 114 of the 1929 Act provides that an extraordinary general meeting of the company may be called by members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company.

The requisition (which may consist of several documents in like form) must state the objects of the meeting, be signed by the shareholders, and lodged at the company's registered office.

The shareholders' requisition should be submitted to the directors at the next Board Meeting and a resolution passed instructing the secretary to issue the necessary notices convening the meeting. Such notices will state that the meeting is convened on the requisition of certain named shareholders and for the objects stated in the requisition. If the directors wish to place any information before the shareholders with regard to the objects named in the requisition, the information must be given in a separate circular, although the latter document may be enclosed in the same envelope with the notice convening the meeting.

If the directors fail to convene the meeting within twenty-one days from the date of the lodgment of the requisition, the meeting may be convened by the requisitionists or any of them representing more than one-half of the total voting rights of all of them. In that event, the meeting must be convened within three months, and all reasonable expenses incurred by the requisitionists are to be paid by the company, and retained out of the directors' remuneration.

MEETINGS: STATUTORY POWERS OF MEMBERS

201. *Discuss, in relation to Meetings, the maxim "When the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable."* (C.I.S. Final.)

The Companies Act provides that certain general meetings of the company shall be held; if not convened and duly held, the members are empowered to apply to the Courts for the enforcement of these statutory provisions. In certain circumstances, members may themselves convene the meetings. The following summary contains the chief provisions—

Under the provisions of Section 114 of the 1929 Act, members of limited companies holding a certain proportion of the share capital are authorized to request the directors to convene an extraordinary general meeting of the company. If the meeting is not convened within twenty-one days from the date of the lodgment of the requisition, the same section enacts that the requisitionists may themselves convene the meeting.

If the directors refuse to give facilities for the convening of the meeting, e.g. the use of the Register of Members to enable the requisitionists to issue the notices of the meeting, a copy of the Register may be obtained under the provisions of Section 98 of the 1929 Act.

A General Meeting of the company should be held once at least in every calendar year (see Sec. 112), at which it is customary for a summary of the previous year's operations to be submitted to the shareholders. Where default is made in holding this meeting, any member of the company is authorized by Sub-section 3 of Section 112 to apply to the Court, who may call or direct the calling of a general meeting of the company.

At the Statutory Meeting (held under the provisions of Sec. 113), members are allowed to discuss any matters arising out of the formation of the company, but no resolutions can be passed unless notice has been previously given in accordance with the company's articles. Sub-section 8 of Section 113, however, provides that the meeting may adjourn from time to time; and at the adjourned meeting, resolutions may be passed, provided that due notice has been given in the interval between the two meetings.

Section 115 of the 1929 Act provides that where a company does not make suitable regulations for the convening of meetings, the election of chairman, and voting powers of members, the provisions contained in that Section shall be applicable.

DIRECTORS REFUSING TO ACT—VALIDITY OF GENERAL MEETINGS CONVENED BY MINORITY

202. *A company has four directors, and three are a quorum. Two directors refuse to attend meetings, and the other two directors instruct the Secretary to convene a General Meeting of the Company. Discuss the duty of the Secretary to convene the meeting and the validity of the proceedings thereat.* (C.I.S. Final.)

Clearly, on his own initiative, the secretary has no right to convene a General Meeting of the company.

If the two acting directors hold one-tenth of such of the paid-up capital as carries the right of voting at general meetings, they may requisition an Extraordinary General Meeting under the provisions of Section 114 of the 1929 Act. In *Barron* v. *Potter, 1914,* it was decided that, where there is a deadlock and the board are unable to act, a shareholders' meeting may be convened under this section.

The case seems to be well covered by the 1929 Act, which provides in Section 115 that if for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or to conduct the meeting in the manner prescribed by the articles or the Act, the Court, on the application of any director or a member who would be entitled to vote at the meeting or of its own motion, may order a meeting to be called, held and conducted in such manner as it thinks fit.

With regard to the validity of the proceedings at a meeting irregularly called, and any resolutions passed thereat, the usual rule is that the proceedings at an irregularly convened General Meeting are invalid; but in *Southern Counties Deposit Bank* v. *Rider and Kirkwood, 1895,* where a notice convening a General Meeting was passed at a Board Meeting at which a quorum was not present, the Court declined to interfere,

and it was held that the resolutions passed at the General Meeting were valid.

SPEAKERS AT MEETINGS

203. *Who may speak at Meetings? Has the mover of* (a) *Amendment,* (b) *Main Question,* (c) *Motion of Adjournment, or* (d) *Previous Question, a right of reply?* (C.I.S. Final.)

Every member legitimately present at a meeting has a right to speak once upon each motion or resolution before the meeting. The mover of the main question has a right of reply upon the debate.

On the motion for the adjournment of either the debate or the meeting, the mover of the main question under discussion at the time is usually allowed the right of reply, but no further discussion is permitted.

The mover of " Previous Question " has no right of reply. Discussion may take place on this motion, but no amendment to it may be moved, although it may be superseded by a motion for the adjournment.

Whilst discussion may also take place on amendments to a resolution, the mover of the amendment has no right of reply.

THE RIGHTS OF A MINORITY

204. *Write a full note on the rights of a minority at a meeting* (C.I.S. Final.)

The chairman should see that equal opportunities are given to the minority for the expression of their opinions upon any motion before the meeting; but, at the same time, this right must not be abused by lengthy, irrelevant speeches, reiterating the same point repeatedly, or by other obstructive tactics. In such instances, the chairman should declare the discussion closed, or, alternatively, the closure should be moved, as otherwise a small minority may tyrannize over the majority.

Where a member, who forms one of a minority, is addressing the meeting, he is entitled to be heard without interruption, and it is the chairman's duty to protect the speaker. Should any points of order arise, they must be decided fairly and impartially, the rights of the minority being given due consideration.

The will of the majority must always be expressed *bona fide* for the benefit of the company as a whole; and where resolutions are passed at a General Meeting with any want of good faith, or in fraud of, or oppression on the minority, the Courts will, on the application of even a single shareholder, interfere to see that justice is done.

Thus, in *Brown* v. *British Abrasive Wheel Co., 1919*, where resolutions were passed at General Meetings altering the articles to give power to the majority to buy out the minority, it was held that the resolutions were invalid as being an oppression of the minority.

A similar result was obtained in *Jonas* v. *Orders and Handford Steamship Co., 1920*, where the proposed alterations of the company's articles were held to be invalid on the ground that they were for the benefit of the company's managers and not for the benefit of the company as a whole.

DUTIES AND POWERS OF CHAIRMAN AND SECRETARY AT A GENERAL MEETING

205. *What are the chief duties and powers of the Chairman and Secretary respectively at a Company Meeting? Discuss the question fully—e.g. preparation for the meeting, conduct of persons at the meeting, whether orderly or disorderly, etc.* (C.I.S. Final.)

The chairman should satisfy himself that his own appointment is regular and in order; that the meeting was properly convened and constituted; that the notices of the meeting were issued under the authority of a validly constituted Board Meeting; and that a quorum of the members is present.

His principal duties and powers may be thus summarized—

1. To see that the items of business are dealt with in the order stated in the Agenda, unless that order is subsequently altered with the consent of the meeting.

2. To see that reasonable and sufficient opportunity is given to the members present to express their views on the motion or resolution before the meeting. (No discussion should be allowed except upon a motion or resolution).

3. In cases of dispute between members, to decide who shall address the meeting, and to take care that the rights of the minority are not ignored.

4. To see that all business transacted is within the scope of the meeting.

5. To preserve and maintain order, and to decide any points of order submitted to him.

6. To see that any disorderly persons are removed and, where it is impossible to maintain order, to adjourn the meeting.

7. To obtain the decision of the meeting with regard to any matter before it, in the manner prescribed by the company's articles.

The Secretary's duties commence before the day of the meeting, and he should—

1. See that the notices convening the meeting are issued in accordance with the company's articles to all the members.

2. Arrange for the members on entering the meeting to sign their names in an Attendance Book or, alternatively, issue admission cards which the members must sign and deliver before entering the meeting.

3. See that proper arrangements are made for the comfort and convenience of the Board of Directors and Shareholders.

4. Have in readiness at the meeting a complete list of members, a copy of the company's memorandum and articles of association, and any correspondence, reports, or other matter likely to be required. Although the minutes are normally read and signed at the next Board meeting, there should be available for reference the Minute Book of General Meetings and the Minute Book of Board Meetings.

5. Where it is anticipated that a poll may take place, prepare suitable voting papers and list of proxies lodged, with the proxy forms in readiness for inspection when required.

6. At the meeting, read the notice convening the meeting, the auditors' report and certificate.

7. Take notes of the proceedings at the meeting for subsequent entry into the Minute Book.

8. Generally, assist the Chairman.

PROCEDURE WHEN SEVERAL AMENDMENTS ARE MOVED

206. *Describe the procedure at a meeting when several Amendments are moved to a motion.* (C.I.S. Final.)

The amendments should be put in writing and handed to the chairman, who must ascertain and decide (1) whether they are in order; (2) whether relevant to the motion;

(3) whether within the scope of the meeting; and (4) the order in which they are put to the meeting. This last named may be the order in which the amendments were proposed, or any other order which appears convenient; but usually it is more advantageous to put them to the meeting in the order in which they affect the main question.

If, however, an amendment to an amendment is moved, the former must be put first and, if passed, then the "amended" amendment must then be put.

Sufficient and reasonable discussion must be allowed on each amendment; on the main question, the "mover" has the right of reply. Amendments cannot be withdrawn except with the consent of the meeting.

After all the amendments have been disposed of, the original motion (as amended where amendments are carried) becomes the substantive motion. Further discussion and amendments may now take place; but where the original motion has been amended, any further amendment which would have the effect of restoring the wording of the original motion must not be allowed. When the debate is ended, the substantive motion in its final form must then be put to the meeting for decision.

[*Note.* Formal amendments, e.g. the closure, previous question, next business, etc. are dealt with in Question No. 209].

DO MOTIONS OR AMENDMENTS REQUIRE TO BE SECONDED?

207. *Should the Chairman put to a meeting Motions and Amendments which have not been seconded?* (C.I.S. Final.)

Although the usual practice at company meetings is for all motions and amendments to be seconded, it is not essential that this should be done unless the company's articles so require. Lord Justice James in *re Horbury Bridge Coal Co., 1879*, stated: "In my opinion, if the chairman put the question without its being proposed or seconded by anybody, that would be perfectly good."

RESOLUTIONS AT ADJOURNED MEETINGS

208. *Before the passing of the 1929 Act the law was that an adjourned meeting, being a prolongation or continuation of the original meeting, resolutions passed at it dated back to the original meeting. Does this law still stand? If not, what is the present law on this matter?*

The law mentioned in the question was changed by the 1929 Act as regards the date of resolutions passed at adjourned meetings. A resolution passed at an adjourned meeting is now treated as having been passed on that date and not on the date of the original meeting.

Section 119 of the Companies Act, 1929, reads as follows—

"Where after the commencement of this Act a resolution is passed at an adjourned meeting of—

(*a*) A company;

(*b*) The holders of any class of shares in a company;

(*c*) The directors of a company;

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date."

INTERRUPTION OF THE DEBATE

209. *Mention various ways in which discussion on an original motion may be interrupted.* (C.I.S. Final.)

Discussion on original motions may be interrupted by a member moving other motions in connection therewith, e.g.—

(*a*) An amendment which revises the original motion in some way.

(*b*) The previous question, next business, or the closure.

(*c*) The postponement of further consideration of the question.

(*d*) The adjournment of the debate or the meeting.

When an amendment is moved, discussion is diverted to the amendment until it is voted upon by the meeting. If the amendment is lost, discussion on the original motion is resumed; but, if carried, the motion as amended becomes the substantive motion, and the latter may be further discussed.

PREVIOUS QUESTION. This motion usually takes the form of "That the question be not now put." If it is carried, the original motion is disposed of and cannot be again put before the meeting. If it is not carried, the original motion is put to the vote without further discussion.

NEXT BUSINESS. A motion to proceed to the next business, after being seconded, is put to the meeting forthwith. If carried, the original motion drops; if lost, discussion is resumed.

THE CLOSURE. The motion "That the question be now put" is also put to the meeting without discussion and, if carried, the original motion is at once put to the vote.

THE POSTPONEMENT OF FURTHER CONSIDERATION OF THE MOTION. To this motion the mover of the original motion has the right of reply, after which it is voted upon. If carried, the debate is postponed to an agreed date or *sine die* (indefinitely, without a date being fixed).

ADJOURNMENTS. The mover of the original motion has the right of reply to a motion for adjournment (either of the debate or of the meeting), except when the adjournment is for a short interval for lunch—or for the restoration of order at a turbulent meeting. The motion should state clearly for how long the debate is to be adjourned (e.g. for one hour); the date on which the adjourned meeting is to be held, or to a date to be hereafter fixed by the chairman.

Discussion on motions is, occasionally, interrupted by the disorderly conduct of some members present. Where there is persistent disorder, the meeting may be adjourned for a short period to enable order to be restored.

[*Note.* For company meetings, where certain business must be transacted, e.g. the adoption or rejection of the report and accounts, the "Previous Question" and "Next business" are out of order, as their acceptance would prevent the meeting transacting the business for which it was convened.]

AMENDMENTS: SOME CONCRETE EXAMPLES

210. *The articles of a company provide that the ordinary business of a General Meeting shall be to receive and consider the Profit and Loss Account and the Balance Sheet, reports of directors and auditors, to elect directors and other officers retiring by rotation, and to declare dividends. An Annual Meeting is convened "to transact the ordinary business of the company," and no notice of special business is given. A shareholder wishes to propose resolutions and amendments for effecting the following objects—*

(a) *Reduction in Directors' remuneration.*
(b) *Appointment of a Committee to investigate the company's accounts.*
(c) *Election of an additional director within the maximum allowed by the articles.*
(d) *Contribution to Red Cross.*
(e) *The creation of a Special Reserve Fund.*

Can any of these matters be ruled by the Chairman as "out of order"; and, if not, at what stage can they be introduced? (C.I.S. Final.)

(*a*) Many articles of association provide that the directors' remuneration shall be fixed by the company in general meeting, and in such instances a resolution for the reduction of their remuneration would be in order.

The article quoted in the question, however, makes no mention of the directors' remuneration; hence it would appear that the proposed resolution for reduction of such remuneration would be "out of order" and could not be put to the meeting. Where the directors' remuneration is fixed by the articles, a special resolution appears to be necessary either for an increase or for a decrease.

(*b*) Section 137 of the 1929 Act provides that a special resolution is required for the appointment of a committee of investigation; the proposed resolution appointing such a committee is therefore out of order. (With the directors' consent, however, a committee to consult and confer with the directors on the company's finances is sometimes appointed without the formality of giving special notice.)

(*c*) A resolution appointing an additional director is "special business" and "out of order," unless previous notice has been given. In *Boschoek Proprietary Co.* v. *Fuke, 1906*, the directors' report (which accompanied the notice) mentioned special business not referred to in the notice, viz., ratification of the appointment of an additional director. It was held that the notice and the report together were sufficient notice of special business.

(*d*) Contributions to the Red Cross appear to be quite outside the scope of the article in question, and the proposed resolution is therefore out of order.

(*e*) The disposal of the company's profits is essentially a matter for the shareholders' decision; but, in the absence of special notice, a resolution for the creation of a special reserve is out of order. Most articles confer authority upon the directors to create Reserve Funds. (See Table A, Cl. 93.)

All these items appear to be matters worthy of the shareholders' consideration and, although resolutions cannot be proposed, items (*a*), (*b*), (*d*), and (*e*) may be discussed on the motion "That the report and accounts be adopted"; whilst item (*c*) may be raised on the motion for the re-election of directors. If the meeting considers it advisable, a motion for the adjournment of the meeting may be moved (and carried) to enable the necessary notices to be given of these proposed resolutions as special business.

PROCEDURE WHEN THE SHAREHOLDERS REJECT THE DIRECTORS' REPORT AND ACCOUNTS

211. *Describe the procedure at a Company's Meeting when the motion to adopt the Directors' report and accounts is defeated.* (C.I.S. Final.)

The effect of the motion being defeated is that of a " vote of censure " upon the directors, and the procedure thereafter will depend upon the attitude of the directors.

Usually, a committee of shareholders is appointed to consult with the directors and (with the directors' consent) inspect the company's books, examine the officers and employees, and, generally, investigate the company's affairs; subsequently reporting the result (with their recommendations) to another general meeting of the shareholders.

Where, however, the directors object to such a committee, it cannot be appointed, as Section 137 of the 1929 Act provides that a special resolution must be passed for the appointment of a committee of investigation. In these circumstances, the meeting may be adjourned to enable notices to be issued convening an Extraordinary General Meeting with a view of passing a special resolution appointing a committee of investigation, which reports to such persons as the company in general meeting may direct.

Alternatively, members holding one-tenth of such of the paid-up capital as carries the right of voting at general meetings may—under the authority of Section 114 of the 1929 Act—lodge a requisition for the convening of Extraordinary General Meetings for this purpose.

The committee, after investigating the company's affairs, will report to the shareholders at a further meeting, when such action as may be deemed necessary will be taken.

Under Section 135, the holders of one-tenth of the shares issued (one-third if a banking company, and one-fifth of those on the register if there is no share capital) may apply to the Board of Trade for the appointment of inspectors. Evidence of *bona fides* is required, together with the deposit of security.

NOTICES OF MEETINGS

212. *Write a full note on the subject of Notices of Company Meetings. Cite Cases.*

Notices must be issued by the persons authorized to issue them in pursuance of a resolution or decision of the directors

at a validly constituted board meeting. The provisions of the Companies Act of 1929 and the company's articles of association must be strictly observed when the notices are issued.

It is essential that proper and sufficient notice be given to all the members entitled to receive it. As a safeguard against the possible loss or miscarriage of a notice, Clause 43 of Table A provides that the non-receipt of the notice by any of the members shall not invalidate the proceedings at any general meeting.

In *Hooper* v. *Kerr, Stuart & Co., 1900*, where the notice had been issued without the directors' authority, but at a subsequent board meeting the directors had ratified and confirmed the notice, it was held that the ratification made the notice good and valid.

The articles of association invariably provide that when a meeting is convened to transact special business, the notice must disclose the general nature of the business. In *Normandy* v. *Ind, Coope & Co., 1908*, it was held that the sufficiency of a notice must be determined by the special circumstances of each case; whilst in *Henderson* v. *Bank of Australasia, 1890*, Mr. Justice Chitty stated: "I think the question may be put in this form, 'What is the meaning which this notice would fairly carry to ordinary minds;' That, I think, is a reasonable test." Hence it may be deduced that the special business must be stated in a fairly explicit, open, and clear manner.

In *Normandy* v. *Ind, Coope & Co.* (referred to above), the notice convened an Extraordinary General Meeting for the purpose of altering the company's articles of association. The nature of the alterations (which were important) was not stated; it was held that the notice was insufficient and the resolutions passed were invalid.

When Extraordinary General Meetings are convened at which it is proposed to pass "Extraordinary" Resolutions, the notice must state the intention to propose such resolutions as "Extraordinary." In the case of Special Resolutions, twenty-one days' notice must be given, and the notice must specify the intention to propose the resolution as a special resolution. It may be noted that, if less than twenty-one days' notice has been given, the informality will be waived if all the members entitled to attend and vote so agree.

For either Extraordinary or Special Resolutions it is desirable that the notice should give the terms of the proposed

resolutions. This, however, is not essential, but the general nature of the business to be transacted must be fully and frankly disclosed. The resolution must be printed and filed with the Registrar of Companies. (Sec. 118.)

In the absence of provisions in the company's articles of association, a meeting of a company (other than one for passing a special resolution) may be called by seven days' notice in writing; and notice shall be served on every member in the manner in which notices are required to be served by Table A.

THE USE OF PROXIES AT ADJOURNED MEETINGS

213. *What are the rules governing the use of Proxies? Discuss their use at adjourned meetings.* (C.I.S. Final.)

213A. *Does a Proxy given for a particular meeting require to be renewed if the meeting be adjourned? May a Proxy be given after the original meeting has been held, to authorize the holder to act at the adjourned meeting?*

The rules relating to proxies are these—

1. In the absence of special provision in the articles, there is no legal right to vote by proxy.

2. In the case of companies which have adopted Table A—

On a poll votes may be given either personally or by proxy. (Cl. 58.)

The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company. (Cl. 59.)

The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid. (Cl. 60.)

An instrument appointing a proxy may be in the form given in Cl. 61, or in any other form which the directors shall approve.

The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. (Cl. 62.)

3. The proxy must be entitled to act as such.

4. The person appointing the proxy must also be under no disqualification.

5. The proxy must be lodged the prescribed period before the meeting.

6. The proxy must be in the form required by the company's regulations.

7. Foreign shareholders may lodge their proxies at the branch office abroad.

8. The proxy must be stamped.

9. A proxy may be revoked at any time before the person appointed thereby has acted upon it.

10. Directors acting *bona fide* in the interests of the company may send out proxy forms with their own names inserted therein, accompanied by circulars advocating their policy, at the expense of the company.

(See also Questions 221 and 222.)

With regard to the use of proxies at adjourned meetings, this entirely depends upon the provisions contained in the company's articles. Where the article governing their use is worded thus—

> "The instrument appointing a proxy shall be deposited at the registered office of the company forty-eight hours before the time for holding the meeting, *whether such meeting be an original or adjourned meeting.*"

or as in Cl. 60 of the 1929 Table A ("for holding the meeting *or adjourned* meeting"), additional proxies may be lodged in the interval between the two meetings up to forty-eight hours before the time of the adjourned meeting. Where the phrase italicized in the above clauses is absent, only those proxies which are lodged within the stipulated time before the original meeting can be validly used at the adjourned meeting. A poll is *not* an adjourned meeting. (See page 214 and Question 228.)

READING NOTICES AND AUDITORS' REPORTS

214. *What statutory requirement, if any, is there for—*

(a) *Reading the notice convening the meeting,*

(b) *Reading the auditors' report,*

at meetings of shareholders? (C.I.S. Inter.)

(*a*) It is customary to read the notice convening the meeting at shareholders' meetings, but there is no statutory requirement to do so. The validity of the meeting depending upon adequate notice being duly given, it is essential that the minutes should bear some reference to the notice, so that the identity of the document is assured. With some companies, it is the practice to insert a copy of the notice in the Minute Book on the page immediately preceding the minutes of the meeting.

(*b*) As regards the auditors' report, Section 129, Subsection 1, provides that the report of the auditors, which is attached to the Balance Sheet, shall be read before the company in general meeting and be open to the inspection of any member. It is usually read by the secretary, but the auditor may do so if he is present.

THE RULES FOR MOTIONS, SPEAKERS, AND DECISIONS

215. *Describe the procedure at Meetings in respect to* (a) *Motions ;* (b) *Decisions of Questions.* (C.I.S. Final.)

216. *What are the rules for Meetings in relation to* (a) *Motions ;* (*b*) *Speakers ;* (c) *Decision of Questions ?* (C.I.S. Final.)

MOTIONS. The articles of association of companies, and the standing orders or by-laws of other bodies, should contain regulations governing the procedure to be observed. Motions must comply with these regulations, be within the scope of the notice convening the meeting, and so framed or phrased that a definite decision can be arrived at. They should be in writing, signed by the proposer, and handed to the chairman. Usually, motions are seconded, but this is not necessary except where the articles or by-laws require it. Original motions are subject to amendment, provided that the amendment is within the scope of the meeting. Amendments to amendments should not be accepted; this usually leads to confusion and difficulties. The chairman may divide the motion into two parts if, by so doing, it facilitates the business of the meeting. After the motion or amendment has been proposed (and, where necessary, seconded), it cannot be withdrawn except with the consent of the meeting. Where an amendment is carried, the original motion as amended becomes the substantive motion, and is

capable of being further discussed and amended. (See also Questions Nos. 206 and 207.)

It should be observed that the Companies Act, 1929, uses the word "resolution" instead of "motion." Theoretically, this is incorrect, for a motion voted upon becomes a resolution, if passed; that is, it is not a resolution until the meeting passes it by vote.

SPEAKERS. Every member legitimately present has the right to speak once only on each motion or amendment. The mover of an original motion has the right of reply on the debate, but the mover of an amendment has no right of reply. The chairman will decide the order in which members shall address the meeting. A speaker should rise before the commencement of his speech and address his remarks to the chairman. He must confine his speech strictly to the question under debate, and resume his seat at its conclusion or (when a point of order is raised) on the chairman rising to address the meeting.

DECISION OF QUESTIONS. Decisions are obtained by putting the question to the vote. The method usually adopted is by a show of hands, each person present having one vote. The chairman declares the result, his declaration being final and conclusive, except in the case of an obvious mistake or fraud. A poll may, however, be demanded, but the demand must be made immediately and by not less than the minimum number prescribed by the articles, standing orders, etc. The poll must be taken in accordance with the provisions of the articles, standing orders, etc., and, if necessary, the meeting must be adjourned for that purpose. Proxies may be used when they are authorized by the articles. The result of the poll is deemed to be a resolution of the meeting.

QUORUM, MINUTES, AND PRIVILEGE

217. *Comment on Quorum, Minutes, and Privilege in Speeches.* (C.I.S. Final.)

A quorum is the minimum number of qualified persons who must be present at a meeting before any business can be validly transacted. The articles of association of companies, and the standing orders or rules of public bodies, fix the number necessary. Table A provides that three members personally present shall form a quorum at general meetings. The quorum for directors' meetings is usually fixed by the

articles; where no provision is made, a majority of the board must be present. The prescribed minimum number must be continuously present until the meeting is closed.

If the articles do not otherwise provide, two members in the case of a private company, and three members in any other company, personally present, shall be a quorum. (Sec. 115.)

In the absence of special provisions in the articles, proxies are not allowed to be included in the quorum; but a representative of a corporation, whether a company or not, at a meeting of another company of which the corporation is a member, may be so counted. Where shares are held jointly, only the person whose name appears first on the register is entitled to attend and vote at meetings; hence, although a joint holding may consist of two or more persons, the member attending counts as only one towards the quorum. In *Burns and Hambro* v. *Siemens Bros.*, 1918, however, it was decided that joint holders may have their holdings split, a different name being entered first in each entry in the Register of Members, so that each holder may attend meetings and exercise fully his voting rights.

Minutes are a summarized record of the proceedings at meetings. They are compiled to enable persons not present at the meeting to know the nature and extent of the business transacted thereat. Whilst the minutes must be unmistakably clear and accurate in every respect, it is also essential that they should be brief yet sufficiently detailed to show the full scope of all the matters dealt with. (See also Questions Nos. 175 and 176.)

Privilege in speeches is the doctrine by which statements reflecting on a person's character or conduct may be justified by reason of the circumstances in which they are uttered. The speaker must act *bona fide* in the exercise of a duty towards his hearers, and the latter must have the right to hear the statements which must be true. There must be no unnecessary publication and no trace of maliciousness on the part of the speaker.

ADJOURNMENTS

218. *What are the Rules respecting Adjournments of Company Meetings?*

An adjournment is the temporary closure of a meeting with the object of its continuance on another date at the

same or another place. The company's articles should contain the regulations under which adjournments may take place.

Usually, the chairman has to obtain the consent of the members present to adjourn the meeting, unless the articles invest him with special powers or the business of the meeting has been completed. (Table A, Clause 49, provides that the chairman may adjourn "with the consent of the meeting" and also that he shall do so "if so directed by the meeting.")

Where a quorum is not present within a stipulated period (usually half-an-hour) from the time appointed for the meeting, the articles (see Table A, Cl. 46) usually provide for the adjournment for one week at the same time and place, when the members present will form a quorum. The articles must be consulted to ascertain whether it is necessary to give members notice of the adjourned meeting. Table A provides that such notice is not necessary except where the meeting is adjourned for ten days or more.

A motion for the adjournment takes immediate precedence over the matter under discussion, and should be put to the meeting forthwith.

The chairman is also empowered temporarily to adjourn the meeting (for, say, half-an-hour) on account of continuous and persistent disorder, to enable order and quiet to be restored.

With regard to the business of an adjourned meeting, the general rule is that only business left unfinished at the first meeting may be transacted. No new business may be introduced, even if notice of it has been given in the interval. In the case of an adjourned statutory meeting, however, the case is different, and new business is allowed provided notice thereof has been given either before the original meeting or in the interval.

A poll is not an adjourned meeting; it is a continuation of the meeting at which the poll was demanded. (See Question 228.)

CHAPTER XVIII

MEETINGS—VOTES AND VOTING PROCEDURE

THERE are four methods of voting at meetings: (1) by voice, the members calling out "Aye" or "Nay," the chairman judging the result by the volume of sound; (2) by count, the members passing into different rooms or lobbies, "tellers" being appointed to count the members as they pass through and report the result to the chairman; (3) on a show of hands, the chairman alternately asking those "in favour of" or "against" the motion to elevate one hand; and (4) on a poll, where voting papers are supplied to the members present, scrutineers being appointed to distribute the voting papers, examine the completed forms, count the valid votes, and report the result to the chairman.

Whilst the first two methods are adopted by legislative assemblies and county or municipal borough councils, they are rarely used at meetings of companies. The last two methods are almost invariably used at shareholders' meetings. Voting at directors' meetings is usually quite an informal affair; but where there is a large board, the formal method of a show of hands is often adopted.

A company's articles of association will contain the regulations governing the voting power of members and the use of proxies. Usually it is one vote for each share or £10 of stock on a poll, but this is not necessarily the case. Where different classes of shares are issued, the voting power may be so arranged that one class, e.g. founders' or deferred shares, have a preponderance; whilst frequently preference shareholders have no vote at general meetings unless their dividends are in arrear. The privilege of attendance and voting at meetings is more usually entirely restricted to members. Exceptions to this rule are the representatives (appointed under lunacy orders, etc.) of members of unsound mind and the appointed representative of a corporation. (See Cls. 56 and 59 of Table A and Sec. 116 of the 1929 Act.) Hence the legal representatives of deceased shareholders are not usually entitled to attend and vote at shareholders' meetings. (Compare Cls. 22 and 59 of Table A.) The right to do so, however, is sometimes

conferred (in special articles) upon the legal representatives, as if they " were the registered holder of such shares."

With statutory companies, the voting regulations are contained in Sections 75 to 80 of the Companies Clauses Act, 1845 ; and these sections should be carefully compared with the relative clauses of Table A. There is some divergence in their provisions as compared with either Table A or any ordinary articles of association. For example, under the 1845 Act, proxies may be used on either a show of hands or a poll, whilst the voting power is arranged according to scale.

At common law, there is no inherent right to vote by proxy. It can only exist by agreement between the parties, i.e. shareholders and the company, as evidenced by the articles, and it is subject to the conditions therein laid down. Table A provides that—

> " The instrument appointing a proxy . . . shall be deposited at the registered office of the company not less than forty-eight hours before the time at which the person named in the instrument proposes to vote, and, in default, the instrument of proxy shall not be treated as valid." (*Cl. 60.*)

A question that sometimes arises (about which considerable doubt formerly existed), when meetings are adjourned, is whether proxies are entitled to be lodged after the date of the original meeting, but before the adjourned meeting. In law, an adjourned meeting is regarded as a continuance of the original meeting, except for the dating of resolutions. (See Ques. 208.) The Table A attached to the Companies Act, 1929, provides (in Clause 60) that a proxy

> " shall be deposited forty-eight hours before the time for holding the meeting, or adjourned meeting."

Hence, in such cases, no difficulty can arise. But in the case of companies which have adopted Table A of the 1908 Act, or similar provisions, it appears, from the decision in *McLaren* v. *Thomson,* 1917, that proxies are invalid unless deposited within the prescribed time before the original meeting. (See Ques. 213, 213A.)

In *Shaw* v. *Tati Concessions, 1913,* it was decided that an adjournment for the purpose of taking a poll was not an adjournment of the meeting within the meaning of an article which allowed proxies to be lodged " forty-eight hours before a meeting or an adjourned meeting." Hence, where a poll is demanded, the interval between the meeting and the date of the poll cannot be utilized for the purpose of obtaining

fresh proxies; and, in such instances, proxies are only valid when lodged within the prescribed time before the date of the original meeting.

It would appear, moreover, that whilst shareholders who did not attend at the original meeting are entitled to attend and record their votes at the poll, those shareholders who were present at the first meeting, but are unable to attend when the poll is taken, are thereby disfranchised.

Whilst most articles of association, standing orders, by-laws, etc., confer upon the chairman a casting vote in the event of an equality of votes, at common law the privilege is not conferred. Some authorities contend that, in order to preserve his impartiality, the chairman (whether he has a casting vote or not) should not use his ordinary vote except when the voting is equal. In that event, he should vote against the motion to prevent it being carried against so strong an adverse vote. Circumstances may decide this point, but it seems quite reasonable (at least, where company meetings are concerned) that the chairman should use his vote, according to his judgment, in the best interests of the company or other body whom he may be serving.

Some years ago, when the London County Council Bill for the extension of the tramways over the bridges and along the Embankment was before the House of Commons, the voting "for" and "against" was equal. The Speaker recorded his vote in favour and, in so doing, explained that—the measure being one of public utility—his action was for the purpose of enabling the Bill to receive further consideration in another place. The practice of the House of Lords, however, when an equality of votes is recorded, is to deem the motion not carried.

Whilst the whole of the questions dealt with in this chapter refer to ordinary registered companies, the underlying principles are equally applicable to statutory companies. Minor differences on points of detail exist, but these differences often occur with the ordinary companies owing to the divergent provisions of different sets of articles of association.

VOTING AT SHAREHOLDERS' MEETINGS

219. *How is voting conducted at a General Meeting of a company? Is a proxy entitled to be counted on a show of hands?*

220. *What are the Rules respecting* (a) *Voting by Poll?* (b) *Use of Proxies?* (C.I.S. Final.)

The articles of association of a company prescribe the procedure to be observed in connection with voting at general meetings, and the prescribed regulations must be strictly observed. Usually, the vote is taken by a show of hands, on the principle of " one man, one vote." Everyone present who is entitled to vote has one vote only, irrespective of the fact that he also holds a proxy for an absent member, unless the articles contain any special provision for such contingencies. The articles of most companies provide that the chairman's declaration that a resolution has been carried shall (unless a poll is demanded) be deemed conclusive evidence of the fact. In the case of special and extraordinary resolutions, this is specially provided for by Section 117 of the Companies Act, 1929.

The company's articles also govern the procedure for voting by poll. Under the 1929 Act a poll may be demanded by such number of members entitled to vote, not exceeding five, as may be specified in the articles, and if there is no provision in the articles with regard to the right to demand a poll, it may be demanded by three members entitled to vote or by one or two members so entitled if he or they hold not less than 15 per cent of the paid-up share capital. (See Table A, Cl. 50.) A provision in the articles requiring that a larger number of members should demand a poll would be valid for an ordinary resolution.

A demand for a poll must be granted by a chairman if it is made by a sufficient number of members who are qualified to vote. The chairman is usually empowered by the articles to decide the manner in which the poll is to be taken, and he may, if necessary, adjourn the meeting for this purpose.

Where, however, a poll has been anticipated or is required by the Court, and the needful preparations made in advance for the examination, listing and totalling of proxies, and the provision of voting papers, the chairman may direct that the poll be taken forthwith. Every member voting should be required to insert on the voting paper the number of shares held by him; to sign his name; and, if acting as a proxy, to state the name of the member for whom he is acting.

The valid proxies received at the company's office will have been listed in the following or similar manner. To facilitate the scrutiny of the voting papers, they should be arranged alphabetically under the names of the proxy-holders,

whilst the proxies in favour of the directors are usually listed numerically on separate sheets and totalled.

No. of Proxy.	Name of Member giving Proxy.	Share Register Fol.	No. of Shares.	Name of Member to whom Proxy. is given.	Share Register Fol.	No. of Votes.	Remarks.

The voting paper may be in the following form—

Member's Name and Signature.	Share Register Fol.	Voting as Proxy for.	No. of Proxy.	Share Register Fol.	No. of Shares.	VOTES.		Remarks.
						For.	Against.	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Members voting on their own account will fill in column 1, 6 and 7, or 8; members voting as proxy will also state the absentee member's name in column 3. The company's officials will enter the appropriate particulars in columns 2, 4, and 5, at the same time verifying the voter's holding stated in column 6. The voting value of the shares is determined by the articles of association. Usually, each share carries one vote, but this is not always the case. Scrutineers should be appointed. Their duty (with the assistance of the secretary) will be to examine the voting papers, to reject any invalid votes, and to report to the chairman the total votes FOR and AGAINST.

Most articles empower the chairman to give a casting vote in the event of an equality of votes, either on a show of hands or on a poll; but in the absence of provisions to that effect, the chairman cannot do so, as at common law he does not possess this right.

PROXIES

221. *Write a full note on Proxies.* (C.I.S. Final.)

222. *What are the Rules respecting Proxies?* (C.I.S. Final.)

A proxy is a person who is authorized to attend and vote at a shareholders' meeting on behalf of another person; but the term is more generally used to denote the document by which the person is authorized to act.

At common law, there is no right to vote by proxy; but the articles of association of most companies contain regulations providing for and governing the use and form of proxy. The provisions of the articles must be strictly observed. Sometimes the person appointed to act as "proxy" must also be a member of the company, though he need not be under Table A.

Proxies must be in writing, executed by the shareholder or his duly authorized attorney. When executed by a corporation, the proxy must be (1) under the common seal, or (2) under hand by an officer of the corporation or attorney appointed under seal. The proxy forms must be lodged at the company's office not less than forty-eight hours before the time of holding the meeting.

The directors may, provided that they are acting *bona fide* in the interests of the company, utilize the company's funds in issuing, stamping, and obtaining proxies in their own favour. (*Peel* v. *London & North-Western Railway Co., 1907.*)

Although not usually classed as such, a proxy form is, in effect, a "power of attorney" in its simplest form.

The stamp duty on proxies for one meeting or an adjournment thereof is one penny. In all other cases, a ten shilling stamp is required as on powers of attorney.

[*Note.* For companies governed by Table A, the Articles regulating the votes of members are Nos. 54 to 62; these clauses include the authorization of proxies and also give a form of proxy. For statutory companies, the provisions as to voting are contained in Sections 75 to 80 of the 1845 Act and Sections 2 to 4 of the Companies (Clauses) Act, 1888.]

THE REGULATIONS FOR VOTING AT GENERAL MEETINGS

223. *What matters should be provided for by the Articles of a company as regards Voting at General Meetings?* (C.I.S. Final.)

It is customary for the articles to provide for—

1. The voting powers of members, either on a show of hands or at a poll, in respect of the shares they hold.
2. The conditions under which a poll may be demanded.
3. The formalities to be observed for voting by proxy, the form of proxy, and who may act in that capacity.
4. The manner in which the voting powers of corporations, joint shareholders, or lunatic shareholders may be exercised.
5. Where members are in arrear with calls on shares, that such members shall not vote, either personally or by proxy.
6. That on an equality of votes, the chairman shall have a second or casting vote.

In the absence of express provision in the articles, each member has one vote in respect of each share or each £10 of stock held by him, and in the case of companies not having a share capital, every member has one vote.

At common law there is no right of voting by proxy; hence provision must be made for this.

VALID PROXIES: A CONCRETE EXAMPLE

224. *A Company's Articles of Association provide that no person shall be entitled to vote at a meeting as a proxy for a shareholder unless he is himself a member of the company. Before the date of this year's Annual Meeting is fixed, A, a shareholder, gives to a non-member a proxy available for "the Annual Meeting of the Company to be held in 19..." Before the meeting is held, the holder of the proxy becomes a shareholder; can he vote at the meeting on behalf of A?* (C.I.S. Final.)

The proxy-holder will be able to attend and vote at the Annual Meeting on A's behalf in the following circumstances—

1. That the document of transfer by which the proxy-holder became a shareholder is duly passed by the directors and registered in the company's books, so that he can attend the meeting in his own rights as a member.
2. That the proxy is in the form prescribed by the company's articles, duly stamped, and is lodged at the company's offices within the authorized time limit.
3. That A does not himself attend the meeting; revoke the proxy; give a later proxy to another person (automatically cancelling the first proxy); or that notice of A's death

is not received by the company before the date of the Annual Meeting.

The fact that the proxy-holder is not a member at the date of signature of the proxy is immaterial; he must, in this particular case, be a member at the date on which proxies are required to be lodged with the company.

THE CHIEF RULES FOR VOTING

225. *Summarize the chief rules as to the calling of Company Meetings and voting thereat, as found in any ordinary Articles of Association, or in Table A of the Companies Act.* (C.I.S. Final.)

226. *Give as nearly as possible the usual clause or clauses in Articles of Association or Table A for enabling a poll to be properly taken.* (C.I.S. Inter.)

The articles usually provide for seven days' notice* at least to the members, specifying the day, date, time, and place of the meeting, and, in the case of special business, the general nature of the business. In practice, the notice often sets out the agenda for the meeting and, where special business is concerned, a draft of the resolutions to be submitted is also included. When the special business consists of the approval of certain agreements incidental to an amalgamation, a new set of articles of association, or a reconstruction scheme, the notice usually states that copies of the agreements, articles, or scheme can be inspected at the company's office prior to the meeting.

A quorum, usually three members, must be present; and if not present within half-an-hour of the appointed time, the meeting is adjourned to the same day in the next week at the same time and place when, failing the prescribed quorum within half-an-hour, the members present shall form a quorum. (When a quorum is not present at meetings convened on a shareholders' requisition, the meeting is dissolved forthwith.)

Voting on resolutions will be decided on a show of hands (unless a poll be demanded by at least three members); and, except where a poll is so demanded, the chairman's declaration that a resolution has been carried, or carried unanimously, or by a specified majority, or lost, shall be (after an entry to

* Twenty-one days' notice in the case of a meeting called to pass a special resolution.

that effect is recorded in the company's Minute Book) conclusive evidence of the fact.

Where a poll is demanded on the question of an adjournment, or the election of a chairman, it must be taken forthwith; but on any other question the poll shall be taken in such manner and at such times as the chairman directs.

(See Table A, Clauses 44 to 62; also Ques. Nos. 219 and 220.

VOTING PROCEDURE

227. *Explain the procedure for enabling all qualified shareholders to exercise their voting powers at a General Meeting.* (C.I.S. Inter.)

The company must give all registered shareholders the prescribed notice of the day, date, time, and place at which the General Meeting is to be held; and where share warrants to bearer are issued, the company must give notice to the holders thereof by advertisement. The length of notice to be given is determined by the articles.

Many companies issue admission cards, which the members are required to sign and deliver up on entering the place of meeting. Holders of share warrants are required to deposit their warrants at the company's office, receiving a receipt for them which will act as a voucher entitling the holder to attend the meeting.

Absentee shareholders may be able to appoint another member as proxy to attend and represent them, but the appointment must be in the form prescribed by the articles and lodged within the stipulated time. Corporations may appoint one of their officials (who need not be a member) to act as a proxy. Where shares are held jointly by two or more persons, usually only the first-named person on the register is allowed to attend and vote.

A person appointed by the Court under Lunacy Orders as committee or *curator bonis* for a member of unsound mind, can attend and vote on behalf of such member.

The voting power of members is determined by the articles, but usually each person present has one vote on a show of hands and one vote for each share held on a poll.

POLL

228. *If a poll is demanded and is not taken there and then, can a member of the company who was not present at the meeting*

validly record his vote at the poll (a) *personally,* (b) *by proxy?*

He may take part in the poll if he is present in person or if his proxy was lodged within the prescribed time before the holding of the original meeting. No new proxies are admitted at the poll if the articles provide that they must be lodged a specified time before the meeting. A poll is not an adjournment but a mode of ascertaining the sense of a meeting, which is continued for that purpose. But a member not present at the meeting when the poll was demanded may vote personally at the poll. (See Ques. 219–224.)

CHAPTER XIX

RECONSTRUCTION AND REORGANIZATION

" RECONSTRUCTION " usually (but not necessarily) means the liquidation and winding up of a company; a new company taking over its entire undertaking and issuing fully- or partly-paid shares to the shareholders. In most instances, the capital of the new company and the " rights " of the shareholders are rearranged on a new basis. " Reorganization," however, is a revision of share capital, the company continuing to exist as a separate entity, with a rearrangement of its capital and the " rights " of different classes of shareholders.

The statutory provisions relating to the reconstruction and reorganization of companies are contained in Sections 153–155 and 234 of the Companies Act, 1929.

The questions included in this chapter deal with the principal features of these sections of the 1929 Act; but it may be noted here that an outstanding feature of Section 234 is the rights conferred upon dissentient shareholders, and the provisions of this section should be carefully studied.

DEFINITION OF REORGANIZATION

229. *What is meant by a reorganization of Share Capital? How is it effected?* (C.I.S. Final.)

Reorganization of share capital may be defined as a rearrangement either by the consolidation of shares of different classes or by the division of shares into different classes. This rearrangement may involve the revision or cancellation of preferential or deferred rights possessed by certain classes of shareholders as to dividends, return of capital, and participation in the surplus assets in a winding up.

The rearrangement can be effected by applying to the Court to order a meeting of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs. If a majority in number representing three-fourths in value of the members (or class) present and voting agree to any reorganization, the arrangement, if sanctioned by the Court, will be binding. A copy of the Court's

order must be filed with the Registrar, and a copy annexed to every copy of the memorandum thereafter issued. (See Sec. 153.)

REORGANIZATION : A CONCRETE EXAMPLE

230. *Section 5 of the Memorandum of Association of a company provides as follows—*

> *"The capital of the company is £25,000, divided into 10,000 Six per cent Cumulative Preference Shares of £1 each with priority as to capital, and 15,000 Ordinary Shares of £1 each."*

Article 42 is as follows—

> *"If at any time the share capital is divided into different classes, the rights attached to any class of shares may be varied with the consent in writing of the holder of three-fourths of the issued shares of that class."*

The whole of the shares of both classes have been issued. It is desired that the whole of the shares shall be of one class, namely, Ordinary Shares. Can this be effected, or not? If so, how? Give reasons for your answer. (C.I.S. Inter.)

It has been legally decided that where the class rights of shareholders are defined by the memorandum, the rights conferred are unalterable (*Ashbury* v. *Watson, 1885*), except where the memorandum itself authorizes alterations (*Welsbach Incandescent Co., 1904*), or where statutory authority is given in the Companies Act. The "capital clause" quoted in the question is silent as to alterations, but the company may effect the desired reorganization by proceeding under Section 153 of the Companies Act, 1929, which provides *inter alia* that where a compromise or arrangement is proposed between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any member of the company, order a meeting of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs. If a majority in number representing three-fourths in value of the members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the members or class of members, as the case may be, and also on the company.

The company's Article No. 42, by itself, is insufficient authority to effect the desired alteration. It will be necessary

to apply to the Court to proceed under this section. If the proposed reorganization is agreed to, an office copy of the order has to be filed with the Registrar of Companies, and a copy of it annexed to every copy of the memorandum of association of the company issued after the order has been made. There is a fine (to which, besides the company itself, every director, manager, secretary or other officer is liable) for default in complying with this provision.

SCHEMES OF ARRANGEMENT

231. *What is a scheme of arrangement under Section 153 of the Companies Act, 1929? Explain the scope of the section and outline the procedure.*

This section relates to a compromise or arrangement of a company either with its creditors (or any class of them) or with its members (or any class of them); and provides that the Court may, on the application of a creditor or member of the company (or its liquidator), order a meeting of the members or creditors to be summoned in such manner as the Court directs.

The meetings must be convened in accordance with the Court's order, and the scheme or compromise submitted to the members and creditors; and provided that three-fourths in value of the creditors or members, as the case may be, present and voting either personally or by proxy, approve the scheme or compromise, it shall be binding upon the creditors, members, and the company. If the company is in liquidation, the scheme is equally binding upon the liquidator and the contributories of the company. In all cases, after the scheme of arrangement has been approved by the creditors or members, the sanction of the Court must be obtained and a copy of the order filed with the Registrar before the scheme can be carried into effect. The Court will sanction the scheme if the provisions of the Companies Act have been complied with, and the scheme is reasonable, and no injustice has been done to any class, and if it is satisfied that the supporters of the scheme are acting *bona fide*.

As an example may be instanced a company possessing valuable assets not immediately realizable, and which, consequently, is in temporary difficulties and unable to pay its creditors. A scheme may be prepared under which the creditors will accept either shares or debentures in satisfaction

of their debts, or, alternatively, payment may be spread over a period of years. The rights attached to the existing shares may remain intact or be modified as circumstances may require.

The scheme may, and often does, involve the formation of a new company to take over all or part of the assets. If a liquidation is in progress, it may provide for a stay of the liquidation and the continuance of the old business.

RECONSTRUCTION: ITS OBJECTS AND HOW EFFECTED

232. *What do you understand by a "Reconstruction" of a company? Mention some of the purposes for which it is undertaken. How is it usually effected?* (C.I.S. Final.)

The "Reconstruction" of a company means a more or less complete rearrangement or reorganization of its affairs and business generally, and may imply its liquidation, and the formation of a new company to take over its assets and liabilities. Generally the object is to raise additional capital (*a*) when the existing capital is exhausted or (*b*) for the purpose of widening its sphere of operations. Sometimes, however, the object is to amalgamate with other concerns, or, where the company's assets have appreciated in value, the business is sold to a new company with an inflated capital and revalued assets. Another example is where the company has made a compromise with its creditors whereby their claims will be converted into shares or debentures of the new company.

Reconstruction may be effected (*a*) by a special Act of Parliament, (*b*) by a sale under the powers taken in the M/A, (*c*) by a sale by the liquidator under Section 234 of the Companies Act, 1929, (*d*) by a scheme of arrangement under Section 153 of the Act, (*e*) by a scheme of arrangement with creditors alone under Section 251 of the Act, (*f*) by acquiring a complete or controlling interest in a company.

Where the reconstruction scheme involves a compromise with its creditors and/or members, the procedure outlined in Section 153 of the 1929 Act must be followed and the authority of the Court obtained to convene meetings of the creditors or members. After the scheme has been approved by the creditors or members, the sanction of the Court must be obtained. In other cases of reconstruction or amalgamation the scheme may go forward under this section, in which case

the company which is transferring the whole or part of its undertaking or property to another company, may be dissolved without going into liquidation.

In other instances, reconstruction schemes are prepared under the authority of Section 234 of the 1929 Act. A draft agreement transferring the company's undertaking to a proposed new company is usually prepared, and Extraordinary General Meetings are convened at which resolutions will be submitted—

(*a*) Approving the draft agreement;

(*b*) Authorizing the voluntary winding-up of the company;

(*c*) Appointing a liquidator;

(*d*) Directing the liquidator to enter into an agreement with the new company in the terms of the draft agreement;

(*e*) Authorizing the distribution of the purchase consideration amongst the members in cash or shares as may be arranged.

The liquidator should be empowered under the agreement to sell shares not taken up.

THE NATURE OF A RECONSTRUCTION SCHEME

233. *Explain briefly the nature of a reconstruction scheme under Section 234 of the Companies Act, 1929.*

This section confers power upon the liquidator of a company being wound up (or proposed to be wound up), to sell the undertaking of the company to another company, and to receive as consideration for the sale shares, etc., in the transferee company; provided that the sale or transfer of the undertaking has been sanctioned by a special resolution of the transferor company. Accordingly, a three-fourths majority of shareholders may resolve upon this form of reconstruction subject only to the liability to purchase the interests of a dissentient minority.

Amalgamations with other companies are sometimes carried out under this section; but the section is largely used by companies who, having exhausted their working capital, reconstruct by selling the company's assets to a new company for partly-paid shares carrying a further liability. By this means, the shareholders are called upon to provide the needed additional working capital.

Dissentient shareholders, however, under the provisions of Sub-section 3 of Section 234, may require the liquidator either to abstain from carrying the resolution into effect or to purchase their interest at a price to be determined by

agreement or arbitration; provided that such shareholders did not vote for the resolution and expressed their dissent in writing to the liquidator within seven days after the passing of the resolution. (It is to be noted that under Section 153 dissentients have normally no rights, the Court having taken into account all the facts and noted the results of the poll.)

If a shareholder does not notify his dissent from the scheme, he must either take up his shares or renounce them. If he chooses the latter alternative he loses all interest in the business and incurs no liability for calls in the new company. There may be a provision that a shareholder loses his right to shares if he does not apply for them within a certain time, but in the case of fully-paid shares there seems no need for application unless, of course, there are on the register a large number of shareholders who cannot be traced.

Although not specifically asked for by the question, an interesting point to note here is that there is no capital duty on the shares to be issued to members and creditors of the transferor company on the formation of the transferee company, and no conveyance duty on the assets transferred. Exemption from the payment of duty is also granted if the transferee company is already in existence and uses unissued capital, or increases its capital, to acquire the assets of the transferor company.

RECONSTRUCTION WITHOUT ASSESSMENT

234. *A Company has 1,000 Founders' Shares of £1 each (market value, £100 each) and 50,000 Ordinary Shares of £1 each (market value, £5 each). Outline the procedure for reconstructing the company on the footing that all shares are equal and that 500 shares in the new company shall be given for each Founders' Share in the old.* (C.I.S. Final.)

Assuming that the market value is to be taken as the basis for the proportional distribution of the shares in the new company, the ratio of the Founders' to the Ordinary Shares will be 100 to 5. Since all shares in the new company are to be equal and one old Founders' share is to be exchanged for 500 new Ordinary shares, then each old Ordinary share will be exchanged for ($\frac{1}{20}$th of 500) = 25 shares. To avoid payment of excessive stamp duty on capital, the shares should be of the nominal value of 4s. each, which will correspond with the present market value; and it is assumed that the

company, after providing for all liabilities, possesses assets to an equivalent value.

The capitalization will therefore be—

Old Company.	*Basis of Exchange.*	*New Company.*	
1,000 Founders' shares	= 1,000 × 500 =	500,000 shares 4/- each	= £100,000
50,000 Ordinary shares	= 50,000 × 25 =	1,250,000 " " "	= 250,000
	Totalling . .	1,750,000 shares 4/- each	= £350,000

It will be necessary for the consolidation of the shares to be effected by a resolution of the company under Section 153, which is explained in Ques. 231 (*q.v.*).

FACILITATING RECONSTRUCTION AND AMALGAMATION

235. *Explain the provisions of the Companies Act, 1929, facilitating reconstruction and amalgamation of companies.*

Section 154 of the Act provides that, where an application is made to the Court for the sanctioning of a compromise or arrangement proposed between a company and its members or creditors, and it is shown that such arrangement has been proposed in connection with a scheme of reconstruction or amalgamation of any two or more companies, and that under the scheme the undertaking or property of the company concerned (called the "transferor company") is to be transferred to another company (the "transferee company"), the Court may make provision for all or any of the following matters—

1. The transfer of the whole or any part of the undertaking and of the property or liabilities of the transferor company.
2. The allotting or appropriation by the transferee company of any shares, debentures, policies, or other similar interests in that company which under the arrangement are to be allotted or appropriated.
3. The continuation by or against the transferee company of any legal proceedings pending by or against the transferor company.
4. The dissolution, without winding up, of the transferor company.
5. The provision to be made for any dissentients from the scheme.
6. Such other matters as are necessary to secure that the reconstruction or amalgamation shall be properly carried out.

It is also provided that property or liabilities transferred shall vest in or become the liabilities of the transferee company; and where an order is made under this section, an office copy of it must be filed with the Registrar of Companies within seven days.

LAW REPORTS

The statute law relating to companies—like all other branches of commercial law—has been supplemented by case law; the latter not only elucidating the statutes but also deciding many questions affecting, and laying down principles governing, the relations of companies with their members, creditors and other parties as well as the relations of the members *inter se*. For the benefit of those readers wishing to consult the original reports of the cases referred to in this volume the appended table of cases is given in an extended form. References are included also to *The Secretary* (the organ of the Chartered Institute of Secretaries), which gives, in a summarized form, the principal features and decisions of important cases.

Readers who are members or registered students of the Chartered Institute of Secretaries may consult the *Times Law Reports* (from 1884); the *Law Times Reports* (from 1910); *Solicitor's Journal* (from 1910); or the back volumes of *The Secretary* in the Institute library. The *Law Reports*, issued by the Incorporated Council of Law Reporting, may be consulted at the Patent Office Library (Chancery Lane, W.C.2), or at the library of the Corporation of the City of London, at the Guildhall in Gresham Street, E.C.1. All the volumes cited in the Table of Cases may be inspected at the British Museum library.

The library of the Corporation of Certified Secretaries has also a good selection of volumes containing company law cases.

Provincial readers attached to one of the branches of the professional associations possibly may be able to consult some of the volumes at the branch library or, alternatively, at the public libraries in their own city or town.

KEY TO ABBREVIATIONS

Law Reports	A.C.	Appeal Cases.
	Ex.D.	Exchequer Division.
	Ch.D.	Chancery Division.
	H.L.C.	House of Lords Cases.
	K.B.D.	King's Bench Division.
	P.C.	Privy Council.
	Q.B.D.	Queen's Bench Division.

The Law Reports are quoted with the year and division, number of volume and page.

Jur. N.S.	*The Jurist* (New Series).
L.J.	*Law Journal* (followed by the division of the Court).
L.T.	*Law Times.*
S.J.	*Solicitor's Journal.*
Sec.	*The Secretary.*
T.L.R.	*Times Law Reports.*

W.N. . . *Weekly Notes.*
W.R. . . *Weekly Reporter.*

References to the Secretary and Weekly Notes require to be read in conjunction with the year ; other reports, the volume number and page are cited.

EXAMPLE

Boschoek Proprietary Co. *v.* Fuke (1906).

1 Ch. 148 . .	*Law Reports* (1906), vol. 1, Chancery Div., p. 148.
75 L.J.Ch. 261 . .	*Law Journal* (Chancery), vol. 75, p. 261.
94 L.T. 398 . .	*Law Times*, vol. 94, p. 398.
22 T.L.R. 196 . .	*Times Law Reports*, vol. 22, p. 196.
54 W.R. 359 . .	*Weekly Reporter* vol. 54, p. 359.
Sec. (1906), p. 151 .	*The Secretary* (1906), p. 151.

TABLE OF CASES

PAGE

AMMONIA SODA CO. *v.* CHAMBERLAIN (1918), 1 Ch. 266; 87 L.J.Ch. 193; 33 T.L.R. 509; Sec. (1917), 211, 213 150

ASHBURY *v.* WATSON (1885), 30 Ch.D. 376; 54 L.J.Ch. 985; 54 L.T. 27; 33 W.R. 882 . . . . 48, 224

BAGOT TYRE CO. *v.* CLIPPER TYRE CO. (1902), 1 Ch. 146; 71 L.J.Ch. 158; 85 L.T. 652; 50 W.R. 177 176

BALAGHAT GOLD MINING CO., *Re* (1901) 2 K. B. 665 . . . 113

BARRON *v.* POTTER (1914), 1 Ch. 895; W.N. 131; Sec. (1914), p. 195; Sec. (1916), p. 186 197

BELLERBY *v.* ROWLAND & MARWOOD (1902), 2 Ch. 14; 70 L.J.Ch. 616; 84 L.T. 651; 17 T.L.R. 510. 66

BETTS & CO. *v.* MACNAGHTEN (1910), 1 Ch. 430; 79 L.J.Ch. 207; 100 L.T. 922; 53 S.J. 521; 25 T.L.R. 552; Sec. (1909), p. 177 and 269 154

BIRKETT *v.* COWPER-COLES (1919), 35 T.L.R. 298; Sec. (1919), p. 99, 101 84

BOSCHOEK PROP. CO. *v.* FUKE (1906), 1 Ch. 148; 75 L.J.Ch. 261; 94 L.T. 398; 22 T.L.R. 196; 54 W.R. 359: 22 T.L.R. 196; Sec. (1906), p. 151, (1910), p. 180. . . . . . . 99, 204

BRADFORD BANKING CO. *v.* BRIGGS (1887), 12 A.C. 29; 56 L.J.Ch. 364; 56 L.T. 62; 35 W.R. 521; Sec. (1910), p. 186 87

BROWN *v.* BRITISH ABRASIVE WHEEL CO. (1919), 1 Ch. 290; W.N 74; Sec. (1919), p. 78 . . . . 187, 199

BURLAND *v.* EARLE (1902), A.C. 83; 71 L.J. (P.C.) 1; 85 L.T. 553; 18 T.L.R. 41; 50 W.R. 241 142

BURNS & HAMBRO *v.* SIEMENS (1919), 1 Ch. 225; W.N. 338; Sec. (1918), p. 122, (1919), p. 14 211

CLARK *v.* HART (1858), 6 H.L.C. 633; 27 L.J.Ch. 615; 5 Jur.N.S. 447 93

CONCESSIONS TRUST (McKay's Case) (1896), 2 Ch. 757; 65 L.J.Ch. 909; 75 L.T. 298 74

DEBENHAM *v.* MELLON (1880), 6 A.C. 24; 50 L.J.Q.B. 155; 43 L.T. 673; 29 W.R. 141; Sec. (1912), p. 61 81

DOVEY *v.* CORY (1901), A.C. 477; W.N. 170 148

ELEY *v.* POSITIVE LIFE ASSURANCE CO. (1876), 1 Ex.D. 88; C.C.L. 7; 45 L.J.Ex. 451; 34 L T. 190; 24 W.R. 338 . . 25

EXPRESS ENGINEERING WORKS (1920), 1 Ch. 466; W.N. 75; Sec. (1920), p. 90 101

FOSTER *v.* NEW TRINIDAD CO. (1901), 1 Ch 208; 70 L.J.Ch. 123; 49 W.R. 119 148

PAGE

Fraser & Chalmers (1919), W.N. 153; Sec. (1919), p. 128 . 46

George Whitechurch *v.* Cavanagh (1902), A.C. 117; L.J.K.B. 400; 85 L.T. 349; 17 T.L.R. 746; 50 W.R. 218 73

Henderson *v.* Bank of Australasia (1890), 45 Ch.D. 330; 59 L.J.Ch. 794 206

Hooper *v.* Kerr Stuart & Co. (1900), 83 L.T. 730; 45 S.J. 139; 17 T.L.R. 162 206

Horbury Bridge Coal Co. (1879), 11 Ch.D. 109 201

Jonas *v.* Orders & Handford Co. (1920). *The Times*, 13th Nov., 1920; Sec. (1921), p. 18 . . . . . 101, 188, 199

Kaye *v.* Croydon Tramways Co. (1898), 1 Ch. 358; 67 L.J.Ch. 222; 78 L.T. 237; 14 T.L.R. 244; 46 W.R. 405 187

London Founders' Association *v.* Clarke (1888), 20 Q.B.D. 576 84

McKay's Case (*Re* Concessions Trust) (1896), 2 Ch. 757; 65 L.J.Ch. 909; 75 L.T. 298 73

McLaren *v.* Thompson (1917), 2 Ch. 41; 261 C.A.; W.N. 156, 214; Sec. (1917), p. 81, 145. 214

Normandy *v* Ind, Coope & Co. (1908), 1 Ch. 84; 77 L.J.Ch. 82; 97 L.T. 872; 24 T.L.R. 57; Sec. (1909), pp. 335, 341; (1910), p. 183 . . . . 154, 206

Oakbank Oil Co. *v.* Crum (1883), 8 A.C. 65; 48 L.T. 537. . 142

Peel *v.* London & North Western Ry. Co. (1907), 1 Ch. 5; 76 L.J.Ch. 152; 95 L.T. 897; 23 T.L.R. 85; Sec. (1907), p. 117 218

Railway Sleepers Co. (1885), 29 Ch. 204; 54 L.J.Ch. 720; 52 L.T. 731; 33 W.R. 595 152

Rowell *v.* John Rowell & Sons (1912), 2 Ch. 609; W.N. 194; 56 S.J. 704; Sec. (1912), pp. 346, 350 67

Royal British Bank *v.* Turquand (1856), 25 L.J.Q.B. 317; 1 Jur.N.S. 1086; 2 Jur.N.S. 663 25

Shaw *v.* Tati Concessions (1913), 1 Ch. 292; W.N. 26; Sec. (1913), p. 114 214

Simpson *v.* Molsons' Bank (1895), A.C. 270 115

Skinner *v.* City of London Marine Insurance (1885), 14 Q.B.D. 882; 53 L.T. 191; 33 W.R. 628; Sec. (1919), p. 99 . 84

Southern Counties Deposit Bank *v.* Rider & Kirkwood (1895), 73 L.T. 374 197

Staples *v.* Eastman Co. (1896), 2 Ch. 303; 65 L.J.Ch. 682; L.T. 479 67

Stapley *v.* Read Bros. (1924), W.N. 121; 40 T.L.R. 442 . 151

Stephens *v.* Medina (1843), 4 Q.B. 422; Sec. (1919), p. 101 . 84

Sutton *v.* English & Colonial Produce Co. (1902), 2 Ch. 502; 71 L.J.Ch. 685; 87 L.T. 438; 18 T.L.R. 647; 50 W.R. 571 . 99

Torbock *v.* Lord Westbury (1902), 2 Ch. 871; 71 L.J.Ch. 845; 87 L.T. 165; 57 W.R. 133 154

PAGE
VERNER v. GENERAL & COMMERCIAL INVESTMENT TRUST (1894), 2 Ch. 268; 63 L.J.Ch. 456; 70 L.T. 516 150
WEBB v. EARLE (1875), 20 Eq. 556; 44 L.J.Ch. 608; 24 W.R. 46 67
WELTON v. SAFFERY (1897), A.C. 299; 66 L.J.Ch. 362; 76 L.T. 505; 45 W.R. 508; Sec. (1911), p. 107 25
WELSBACH INCANDESCENT CO. (1904), 1 Ch. 87; 73 L.J.Ch. 104; 89 L.T. 645; 20 T.L.R. 122; 52 W.R. 327; Sec. (1904), p. 68. 48, 224
GEORGE WHITECHURCH v. CAVANAGH (1902), A.C. 117; 71 L.J.K.B. 400; 85 L.T. 349; 17 T.L.R. 746; 50 W.R. 218 . . . 74
WRIGHT v. HORTON (1887), A.C. 371; 56 L.J.Ch. 873; 56 L.T. 782; 36 W.R. 17 134

INDEX

ACCOUNTS, 141
Adjournment. (See Meetings)
Administration, letters of, 85
—— *ad litem*, 86
—— *cum testamento annexo*, 86
—— *de bonis non*, 86
—— *durante absentia*, 86
—— *pendente lite*, 86
—— compared with probate, 85
Ad valorem duty on transfers, 70
Agenda, 168 *et seq.*
—— of annual meetings, 155, 181
—— of directors' meeting, 168, 172, 176
Agent, appointment of, 178
——, agreement with company, 178
Allotment, filing of statement, 58
——, —— of contracts, 58
——, irregular, 57
——, resolution, form of, 188
——, restrictions on, 56
——, return of, 58
——, statutory requirements, 56
Alteration of articles, 30, 156
—— of capital, 41
—— of company's name, 29
—— of objects clause, 27, 29
—— shareholders' address, 8
Amendments, 200 *et seq.*
——, discussion on, 201
——, examples of, 203
——, order of, 200
——, seconding, 201
Annual general meetings. (See Meetings)
—— return, 115
Applications for shares, 21
——, procedure, 21, 109
—— and allotments book, 109, 110
Appointment of agents, 178
—— of auditors, 119, 174
—— of bankers, 174
—— of committee of directors, 180, 189, 190
Appointment of committee of investigation, 186
—— of directors, 98, 188
—— of managing director, 173
—— of secretary, 173
Articles of Association, 23, 24
—— ——, alterations, 30, 156
—— ——, difference between memorandum and, 23
—— ——, effect of, on company, members and outsiders, 24
—— ——, functions of, 23
—— ——, legal effect of, 24
—— ——, registration of, 21
—— ——, stamp and fee on, 21
Assets, fixed, 41, 149
——, floating, 41, 149
Associations not for profit, 26
Attorney. (See Power of Attorney)
Auditors, 119 *et seq.*
——, appointment of, 119
——, change of, 120
——, duties and powers, 122
——, provisions of articles, 119
——, removal of, 123
——, remuneration of, 120
——, report of, 122
——, —— of, to be read, 122, 209
——, secretary's duties, 121
——, statutory companies, 119, 120
——, statutory provisions, 119, 120

BALANCE certificate, 77, 78
—— sheet, 115, 141
—— tickets, 77, 79
Bankers, appointment of, 174
Bankers' lien on shares, 10
——, loan from, 10
Bankruptcy of member, 69
Bearer debentures, 131
—— share warrants, 63
Bills of Exchange, 16
—— ——, collection, 16
—— ——, documentary, 18

Bills of Exchange, endorsement, 7
—— ——, negotiation, 16
—— ——, signatures on, 7, 174
—— ——, taken up under rebate, 17
—— ——, use of company's name, 25
—— of Lading, 16, 18
—— ——, lost, 15
Blank transfer, effect of, 88
Board meetings. (See Meetings)
—— of Trade, appointment of auditors, 120
—— —— dispensing with "limited" in company's name, 26
—— ——, sanction to change company's name, 29
—— ——, sanction to payment of interest out of capital, 145
Bonds. (See Debentures)
Bonus shares, 46, 50, 162
—— ——, their distribution, 47
Books of company, 107
Borrowing. (See also Debentures)
—— powers of company, 130
—— —— of directors, 130
Branch register, 113
Brokerage. (See also Commission), 56
Business, commencement of, 27, 34, 125

CALL letter, 61
Calls on Shares, 60
—— ——, forfeiture for non-payment, 61, 92
—— in advance, 61, 62
—— in arrear, 62
——, interest on overdue, 61, 62
——, liability of deceased shareholder's estate, 61
——, —— of joint holders, 54
——, making of, 60
——, resolution making a, 60
Capital, authorized, 40
——, circulating, 41, 149
—— clauses in memorandum, 39
——, consolidation, 43, 158
——, conversion of stock into shares, 43
——, definition of, 40
——, duty on, 21
——, fixed, 41, 149
Capital, increase of, 41, 158
——, issue at a discount, 49
——, issued, 40
——, nominal, 40
——, notice to registrar of alterations, 42, 43
——, reconstruction, 223
——, reduction of, 42
——, registered, 40
——, reorganization, 223
——, reserve, 40
——, return of, 44
——, subdivision, 43
——, subscribed, 40
Capitalization of profits, 9
Certificate entitling company to commence business, 27
—— of alteration of "objects" clause, 27
—— —— of capital, 27
—— of incorporation, 27, 173
—— of reduction of capital, 27
—— of registration of mortgages, 28
—— of shares, 53
—— ——, balance, 77, 78
—— ——, cancellation, 75
—— ——, charge for, 64
—— ——, definition, 54
—— ——, endorsement, 74
—— ——, evidence of title, 54
—— ——, fractional, 51
—— ——, issue of, 159
—— ——, lost or stolen, 64
—— ——, nature and effect, 53
Certificates issued by Registrar, 27
Certification of transfers, 73
—— ——, definition, 73
—— ——, legal effect, 73
—— ——, notice to transferor, 76
—— ——, procedure, 74
—— ——, record of, 74
—— ——, transfer undated, 75
—— ——, transfer unsigned, 76
—— ——, transfer unstamped, 75
Chairman, appointment of, 173
——, duties of, 199
——, power to adjourn meetings, 203
Change of name, 29
Charges, 129 *et seq.*
——, Register of, 109, 129
Cheques, lost, 15
——, procedure, 7

Cheques, signatures on, 7, 174
Circulars, issue of, 152
Circulars, specimens of, 159 *et seq.*
Circulating capital, 41, 149
C.I.F. contracts, 17
Closing of share register, 143
Colonial register. (See Dominion Register)
Commencement of business, 27
—— ——, public companies, 34
—— ——, private companies, 34, 125
—— ——, Registrar's certificate, 27
Commission, payment of, on shares, 57, 157
Committee of directors, 104, 180, 189, 190
—— of investigation, 186, 205
Common form of transfer, 69, 87
—— seal, 37, 174, 176
—— ——, resolution to adopt, 174, 191
Companies, classes of, 22
—— Clauses Acts, 20
——, comparison of, with partnership, 23
——, formation of, 20
—— limited by guarantee, 26
—— —— by shares, 22
——, membership of, 23
——, private, 124
——, unlimited, 22
(See also Private and Statutory Companies)
Consolidation of share capital, 43, 158
Contracts, 38
——, adoption of, 176
——, making of, 38
—— prior to commencing business, 34, 176
——, provisional, 34, 106
—— ——, when binding, 34
Conversion of private into public company, 126
—— of public into private company, 127
—— of shares into stock, 43
Correspondence, secretary's signature, 6
Coupons, 63
Creditors' objections to reduction of capital, 44

Date of membership, 112
Death of administrator, 90
—— of executor, 90
—— of joint holder, 89
—— of member, 69
Debenture-holders, register of, 109
—— ——, position of, 136
Debentures, 129 *et seq.*
—— as collateral security, 135, 137
——, bearer bonds, 131
——, borrowing powers, 130
——, certificate of Registrar, 28, 140
——, classes of, 131
—— compared with shares, 40
——, definition of, 40
——, examples of, 138
——, fixed charges, 131
——, floating charge, 131, 135
——, holder's position, 136
——, issue of, 134, 164
——, issue at a discount, 137
——, memorandum of satisfaction, 28, 138
——, nature of, 131
——, negotiable instruments, 132
——, offer to shareholders, 164
——, *pari passu*, 139
——, procedure to create, 135
——, redemption of, 138
——, registered, 131
——, registration of mortgage or charge, 132
——, reissue of redeemed, 137
——, statutory provisions, 129
——, trust deeds, 131
——, unsecured (naked) debentures, 131
Directors, 98 *et seq.*
——, appointment, 98
——, attendance book, 109
——, committee of, 104, 180, 189, 190
——, consent to act, 21, 98
——, contracts with company, 101
——, definition, 98
——, delegation of powers, 104
——, disposal of assets, 105
——, filing list of, 21
——, joining board after allotment, 32
—— not eligible as auditors, 119

Directors, publication of names, 105
——, qualification, 64, 98
——, quorum, 173
——, refusing to act, 197
——, register of, 109
——, remuneration, 100, 204
——, resignation of, 103
—— signing for the company, 7
——, statutory provisions, 32, 98
——, *ultra vires* acts, 101
——, vacancies, power to fill, 102
——, voting, 101
Discount, issue of shares at, 49, 56
—— on debentures, 137
Distringas, notice in lieu of, 84
Dividend warrants (tax deduction), 145
Dividends, 141 *et seq*
——, board resolutions, 146
——, coupons, 63
——, declaration of, 142, 146, 155
——, general principles affecting, 142
——, joint holders, 55
——, legal decisions on, 142, 147, 149, 150
——, nature of interim, 147
——, notice of, 146
—— on share warrants, 63
—— payable out of profits, 147
—— —— —— of capital, 145
——, preparation and payment, 143
——, profits available for, 142
——, provisions of articles, 142 148
——, resolution declaring, 146
——, validity of, 147
Dock warrants, 18
Documentary drafts, 18
Dominion register, 113

ESTOPPEL, 53
Executors, 85, 86, 89
——, letter of request, 53
(See also Personal representative)
Export trade, finance of, 16
Extraordinary general meetings, 193
—— resolution, 185, 206

FEES payable to Registrar of Companies, 21
—— registration fees payable to companies, 88
Filing documents with Registrar of Companies 21
Financial statement, 179
Finance of foreign trade, 16
Fixed assets and capital, 41, 149
—— charge in debentures, 131
Floating charge in debentures, 131, 135
F O B cóntracts, 17
Foreign trade (export), 16
—— —— (import), 17
Forfeiture of shares, 92 *et seq.*
—— ——, definition, 92
—— ——, notice of, 93
—— ——, procedure, 93, 94
—— ——, records in share register, 95
—— ——, —— in accounts, 95, 96
—— ——, re issue, 94
—— ——, resolution for, 93, 94
—— ——, statutory companies, 92
Formation of public companies, 20
—— of private companies, 126
Fractional certificates, 51, 59
Fully-paid shares, free issue, 50

GENERAL meetings (See Meetings)
Guarantee companies, 26

HYPOTHECATION, letter of, 17

IMPORT trade, finance of, 17
Incorporation of companies, 20
——, certificate of, 27
——, effect of, 27
——, private companies, 125
——, public companies, 20
Increase of capital, 41, 158
—— ——, power to, 41
—— ——, resolution for, 155, 190
Indemnity, letter of, 64
Index to share register, 108
Inspection of minute book, 112, 170
—— of register of members, 112
—— —— of mortgages, 130
Insurance claims, 11

Interim dividends, 147, 188
Interest during construction, 145
—— payable out of capital, 145
Irregular allotment, 57
Investigation, committee of, 186

JOINT holders, 54
—— ——, death of, 54
—— ——, dividends to, 55
—— ——, joint liability, 54
—— ——, notices, 55
—— —— voting, 54, 221

LETTER of hypothecation, 17
—— of indemnity, 64
—— of request, 53, 114
—— of renunciation, 59, 66
Letters of administration, 85
—— ——, registration of, 86
—— ——, resealing, 90
—— to shareholders, 8, 12
Liability, limitation of, 23, 26
Lien, bankers, 10
—— of company, 87
—— of other parties, 87
Limited by guarantee, 22, 26
——, last word of company's name, 25
——, licence dispensing with use of, 26
——, statutory provisions for usage, 25
Loose-leaf ledgers, 108
Lost bills of lading, 15
—— cheques, 15
—— share certificate, 64
Lunacy of member, 69, 89

MAJORITY, 185
—— for extraordinary resolution, 185
—— for ordinary resolution, 185
—— for special resolution, 185
—— powers must be used *bona fide*, 187, 199
Marine insurance claim, 11
Marriage certificates, 88
Marriages, register of, 117
Meetings, 192 *et seq.*
——, adjournment, 201, 203, 211
——, agenda. (See Agenda)
——, board, 173, 177
——, casting vote, 185, 215, 217
——, chairman at, 199
Meetings, chairman's duties and powers, 199
——, class, 194
——, closure, 202
——, convening, 195
——, decisions at, 210
——, extraordinary, 193
——, interruptions at, 202
——, motions at, 209
——, next business, 202
——, notices, 152, 205
——, ordinary general, 193
——, previous question, 198, 202
——, procedure, 192
——, proxies. (See Proxies)
——, quorum, 173, 210
——, requisition of, 195
——, rights of minority at, 198
——, rules for adjournments, 198, 201, 209
——, —— for decisions, 210
——, —— for motions, 209
——, —— for speakers, 198, 209
——, secretaries' duties, 5, 199
——, shareholders' powers, 196
——, speakers at, 198, 209
——, special business, 193
——, statutory enactments, 192
——, —— meetings, 35, 193
——, two meetings on one notice, 208
——, validity of, 194, 197, 198
Membership, definition, 52
——, how acquired, 52
Memorandum of Association, alteration of, 29
—— ——, contents of, 23
—— ——, difference between articles and, 24
—— ——, functions of, 23
—— ——, guarantee company's 26
—— ——, legal effect of, 24
—— ——, nature of, 23
—— ——, registration of, 21
—— ——, stamp duty and fees, 21
—— of deposit and charge, 139
—— of satisfaction, 28, 138
Minimum number of members, 20
—— subscription, 56, 57
Minorities, rights of, 198
Minute books, 114, 169

Minutes, 168 *et seq.*
—— as evidence, 170
——, confirmation of, 169
——, difference between reports and, 171
——, inspection of, 112, 170
—— of annual meetings, 182
—— of board meetings, 173, 177
—— of decisions, 171
—— of directors' resolutions without meeting as a board, 171
—— of narrations, 171
——, signature of, 169, 170
Mortgages, 129 *et seq.*
(See also Debentures)
—— and charges, Registrar's certificate, 28
——, Register of, 109, 129, 133

NAKED debenture, 131
Name of company, 28
—— —— "and reduced," 42
—— ——, change of, 29
—— ——, display of, 25
—— —— in all documents, 25
—— —— in memorandum, 25, 26
—— ——, "limited" as last word, 25, 26, 28
—— ——, Board of Trade licence, 26
—— ——, statutory provisions, 25
Nominal consideration, 71
Notices, 152 *et seq.*
——, *distringas*, 84, 89
—— to holders of bearer warrants, 195
——, length of, 152
—— of certification, 72, 76
—— of lodgment of transfer, 72, 75
——, sufficiency of, 154, 206
——, share certificates are ready, 159
—— of meetings, 205
—— ——, annual general meeting, 155
—— ——, examples of, 154 *et seq.*
—— ——, extraordinary meeting, 206
—— ——, length of, 152
—— ——, preparation and dispatch of, 192
Notices of meetings, provisions of articles, 152, 153
—— ——, ratification of invalid, 206
—— ——, reading the, 208
—— ——, special business, 153
—— —— to alter articles, 154
—— —— to authorize underwriting commission, 157
—— —— to consolidate capital, 158
—— —— to increase capital, 155

OBJECTS of company, 24
—— ——, alteration of, 27, 29
—— —— in memorandum, 23
Offer of new shares, 58
Office of company, 25
Ordinary shares, 40

PARTNERSHIPS, comparison of, with companies, 23
Personal representative, 85, 86, 89
—— ——, death of, 89
—— ——, dividends, 86
—— ——, entry in share register, 69
—— ——, joint holders, 54, 55
—— ——, letter of request, 70
—— ——, registration in personal capacity, 70
—— ——, statutory companies, 70
—— ——, transfers, 70
—— ——, voting, 213
Poll, 216, 222
——, demand for, 216, 221
——, procedure, 216
——, provisions in articles, 216
——, voting on, 217
Powers of Attorney, 80–82
—— ——, attorney's signature, 81
—— ——, donor's signature, 80
—— ——, duration and extent, 81
—— ——, examination of, 80
—— ——, execution of, 82
—— ——, general and special powers, 80
—— ——, joint powers, 80
—— ——, power to borrow, 80
—— ——, register of, 117
—— ——, registration of, 80
—— ——, —— fee, 88
—— ——, revocation, 81

Powers of Attorney, specimen, 80
—— —— stamp duty, 82
Preference shares, 41
—— ——, dividends, 67
—— ——, modification of rights, 48, 67, 163
—— ——, reduction of dividend, 48
—— ——, revision of rights, 47, 67
—— ——, rights conferred by memorandum, 48
—— ——, rights conferred by articles, 48
—— ——, usual rights, 67
Preliminary contracts, 34, 176
Previous question, 198, 202
Private companies, 124 *et seq*
—— ——, certificate on annual return, 116, 128
—— ——, commencement of business, 125
—— ——, conversion into public company, 126
—— ——, —— of public company to, 127
—— ——, definition, 124
—— ——, employees as members, 125
—— ——, formation, 126
—— ——, limit of members, 125
—— ——, privileges, 124
—— ——, provisions of articles, 124, 125
—— ——, registration of, 126
—— ——, restriction of transfers, 126
Privileges in speeches, 211
Probate, 85
——, fee for registration, 88
——, register of, 116, 117
——, registration of, 86
——, resealing, 90. (See also Personal representative)
Profit and Loss Account, 141
Profits, 142, 147, 148, 149
——, divisible, 142, 149
Prospectus, definition, 31
——, filing copy with Registrar, 55
——, issue of, 55, 175, 189
——, pre-issue conditions, 55
——, statement in lieu, 31
——, statutory provisions, 31
Proxies, 214–220
Proxies at adjourned meetings, 207, 214, 222
——, list of, 217
——, to members, 219
——, persons qualified to act, 218
——, rules for, 207, 214
——, stamp duty, 218
——, statutory companies, 218
——, using companies funds, 218
——, validity of, 219

Quorum, 210
—— at board meetings, 173, 210
—— at shareholders' meetings, 210
——, exclusion of proxies, 210
—— not present, 212
——, provisions of articles, 210, 212

Reconstruction, 223 *et seq.*
——, examples of, 228, 229
——, nature of, 227
——, objects of, 226
——, rights of dissentients, 223
——, schemes of arrangement, 225
Redeemed debentures, 137
Redemption of mortgages, 138
Reduction of capital, 42
—— ——, creditor's objections, 44
—— ——, example of, 45
Register of debenture holders, 109
—— of certified transfers 75, 77
—— of directors, 105
—— of letters of request, 117
—— of marriages, 117
—— of members, 97, 107, 111, 112
—— of members (Dominion), 113
—— of mortgages, 109, 129, 132
—— of powers of attorney, 117
—— of proof of death, 117
—— of probates, 73, 116, 117
—— of transfers, 83, 107
Registered office, 21, 25
Registrar of companies, certificates issued by, 27
Registration fees, 88
—— of powers of attorney, 80
Renunciation, letter of, 66
——, split letters, 66
Reorganization, 223 *et seq*
——, definition, 223
——, examples of, 223
——, statutory provisions, 223

Report on an accident, 165
—— on company's stability, 166
—— and accounts, adoption, 183
—— ——, rejection, 205
Reports of meetings compared with minutes, 171
Requisitioned meeting, 195
Resealing of probate, 90
Reserve fund, distribution of, as bonus, 46
Resolutions, 184 *et seq.*
——, adjourned meeting, 201
——, definitions, 184
——, extraordinary, 185, 206
——, invalid, 186
—— of class meetings, 184
—— of directors, 171, 184
—— of shareholders, 185
——, ordinary, 185
——, special, 185, 206
——, validity of, 185
Resolutions, forms of
agreement, to approve, 175, 178
——, to seal, 175
agents, to appoint, 178
allotment of shares, 188
articles, to alter, 156
auditors, to appoint, 174
——, to re-appoint, 191
——, to re-elect, 183
bankers, to appoint, 174
borrowing powers, 188
call, to make, 61, 189
capital, to increase, 155, 190
——, to consolidate, 158
casual vacancy in directorate, 188
chairman, to appoint, 173
commission, payment of, 157
committee of directors, 180, 189
committee of investigation, 186
common seal, to adopt, 174, 191
contract, to seal, 189
convening extraordinary meeting, 190
conversion of public to private company, 127
custody of keys of seal, 174, 191
debentures, to issue, 134, 190
director, to elect, 183
directors, committee of, 180, 189
dividend, interim, 188
——, final, 146, 183
Resolutions, forms of—(*cont.*)
extraordinary general meeting, 190
forfeiture of shares, 93, 94
managing director, to appoint, 173
prospectus, to approve, 175
——, to issue, 175, 189
report and accounts, to adopt, 183
secretary, to appoint, 173
seal, to adopt, 174, 191
sealing agreement, 175
—— contract, 189
shares, allotment of, 188
underwriting commission, 157
vendors' agreement, to approve, 175
Return of capital, 44
Returns, annual, 115
——, of allotments, 58

SATISFACTION, memorandum of, 28
Scrip, 135
Seal. (See Common seal)
Secretary, agent for the company, 5
——, appointment of, 173
——, duties at audit, 121
——, —— at board meetings, 5
——, —— at shareholders' meetings, 192, 200
——, —— and responsibilities, 4
——, signing for the company, 6
——, the executive, 4
——, the routine, 4
Service of documents, 14
Share capital. (See Capital)
—— certificate. (See Certificate of shares)
—— register, inspection of, 112. (See also Register of Members)
—— transfer department (routine work), 72, 76
Shareholder. (See Membership)
Shareholders, letters to, 8, 12
Share warrants. (See Warrants to Bearer)
Shares, 52 *et seq.*
——, allotment, 56–59
——, bonus, issue of, 46, 162
——, brokerage on, 56

Shares, calls on, 60–62
——, classes of, 40
——, commission on issue, 57, 157
——, compared with stock, 41
——, consolidation, 43
——, conversion into stock, 43
——, definition, 40
——, discount on, 49
——, distinctive numbers, 53
——, forfeiture, 92
——, fully-paid, free issue, 50
——, issued otherwise than for cash, 65
——, lien on, 87
——, new issue, 161
——, preference, 41
——, revision of preferential rights, 47, 67
——, subdivision, 43
——, surrender, 66
Shipments, C.I.F., 17
——, F.O.B., 17
Signatories to memorandum and articles, 52
Special business, 153
—— resolution, 185, 206
Speeches, privilege in, 211
Stamp duties and fees on
debentures, 132
incorporation of company, 21
letters of renunciation, 66
powers of attorney, 82
share warrants, 64
transfers, 70, 132
Statement in lieu of prospectus, 31
Statutory books, 107
Statutory companies—
auditors, 119, 120
books and registers, 107
debentures and mortgages, 129
formation of, 20
forfeiture of shares, 92
minutes, 170
procedure at meetings, 192
transfer of shares, 69
transmission of shares, 70
Statutory declaration, 64
—— meeting, 35
—— ——, adjournment, 36
—— ——, agenda, 36
—— ——, objects, 36
—— ——, resolutions at, 36
—— ——, secretaries' duties, 35
Statutory report, 35
Stock, conversion into shares, 43
——, definition, 41
——, distinguished from shares, 41
—— Exchange quotation, 13
Stop notice, 84
Subdivision of shares, 43
Surrender of shares, 66
Survivorship in joint account, 54

Trading returns, 179
Transfer of shares, 69
—— —— by administrators, 85
—— ——, balance certificate, 72, 77
—— ——, balance receipts, 76. 78
—— —— by attorney, 78
—— —— by deed, 69, 87
—— ——, blank transfer, 88
—— ——, certification, 73, 75, 76
—— ——, closing of registers, 143
—— ——, common form, 69, 87
—— ——, Dominion register, 113
—— ——, examination of, 77
—— ——, execution of, 87
—— ——, fees, 79
—— ——, foreign and Colonial probate, 90
—— ——, lunacy of member, 69
—— ——, nominal consideration, 77
—— ——, notice of certificatio . 75
—— ——, notice of restraint, 84
—— ——, notice of transfer, 76
—— —— on bankruptcy, 69
—— —— on death of administrator, 89
—— —— on death of executor, 89
—— —— on death of shareholder, 89
—— ——, preparation of, 84
—— ——, provisions in articles, 69
—— ——, —— of Act, 69
—— ——, receipt for, 76
—— ——, records of, 78, 83
—— ——, register of, 83
—— ——, registration procedure, 76
—— ——, routine work of transfer department, 72

Transfer of shares, scrutiny of, 77
—— ——, stamp duties, 70
—— ——, statutory companies, 70
—— ticket, 75, 77
Transmission, 69. (See also Personal representative)
Trust deed, 131
Trusts, non-recognition of, 115

Ultra vires acts, 101, 186
Underwriting commission, 56, 157
——, example of, 33
Unlimited companies, 22
Unsecured debentures, 131

VENDOR'S agreements, 175, 176
—— shares, 175
Voting, 213 *et seq.*
——, at shareholders' meetings, 213
——, by holders of share warrants, 221
——, by proxy, 207, 214, 221
——, by representatives, 213
——, by shareholding companies, 213, 219
Voting, casting vote, 185, 215, 217
——, interested director, 101
——, joint holders, 54, 221
——, methods of, 213
——, poll, taking of, 216
——, procedure, 213, 221
——, provisions of articles, 213
——, regulations, 213, 219
——, rules for, 213, 216, 220
——, statutory companies, 214

WARRANTS to bearer, 63
—— ——, creation of, 64
—— ——, definition of, 63
—— ——, dividends on, 63
—— ——, issue of, 64
—— ——, nature of, 63
—— ——, not a qualification for directorship, 64
—— ——, notice of meetings, 195
—— ——, private company may not issue, 64
—— ——, statutory provisions, 64
—— ——, stamp duty on, 64
—— ——, voting regulations, 221

MADE IN GREAT BRITAIN AT THE PITMAN PRESS, BATH
C7—(B.1902)

An Abridged List of

COMMERCIAL BOOKS

published by

Sir Isaac Pitman & Sons, Ltd.

A complete Catalogue of Commercial Books will be sent post free on request

---

ARITHMETIC

	s.	*d.*
Arithmetic of Commerce. By P. W. Norris, M.A., B.Sc. (Hons.)	3	6
Complete Business Arithmetic. Revised by Ivor T. Plant. 4s. Answers, 2s. 6d. net. Part I. 2s. 6d. Answers, 1s. 6d. net. Part II. 2s. 6d. Answers, 1s. 3d. net.		
Complete Mercantile Arithmetic. By H. P. Green, F.C.Sp.T. (with Key) 6s. Part I. 3s. 6d. Answers separately, 1s. 3d. net.		
First Year Commercial Mathematics. By H. Harman, B.Com. 2s. 6d. With Answers, 3s. 6d.		
Logarithms in Commerce. By W. Chanin, M.R.S.T.	2	0
Logarithms Simplified. By Ernest Card, B.Sc., and A. C. Parkinson, A.C.P.	2	0
Practical Commercial Arithmetic. By H. Watson, B.Sc. (Econ.)	4	0
Practical Commercial Mathematics. By H. Stanley Redgrove, B.Sc. 5s. With Answers, 7s. 6d. net.		

BOOK-KEEPING AND ACCOUNTANCY

	s.	*d.*
Accountancy. By William Pickles, B.Com. (Vict.), F.C.A., A.S.A.A. (Hons.). 15s. Key 12s. 6d.		
Accountant's Dictionary. Edited by F. W. Pixley, F.C.A. In Two Vols . . . *Net*	67	6
Accounts of Executors, Administrators, and Trustees. By William B. Phillips, F.C.A., A.C.I.S Revised by F. T. Wright, A.C.A.	5	0
Advanced Accounts. Edited by Roger N. Carter, M.Com., F.C.A. 7s. 6d. Key, by R. A. Goodman, 20s.		
Balance Sheets: How to Read and Understand Them. By Philip Tovey, F.C.I.S. . . . *Net*	3	6

	s.	d.
BOOK-KEEPING, A COURSE IN. By R. W. Holland, O.B.E., M.A., M.Sc., LL.D.	4	0
BOOK-KEEPING FOR BEGINNERS. By W. E. Hooper, A.C.I.S.	2	0
BOOK-KEEPING. By A. J. Favell, B.Sc. (Econ.), A.C.I.S. Stage I, 2s. 6d. Stage II, 2s. 6d.		
BUSINESS INVESTIGATIONS. By David Finnie, M.A., and S. S. Berlanny, C.A. *Net*	12	6
BUSINESS ACCOUNTS. By L. A. Terry, B.Com., and W. T. Smith, M.Com.	3	6
BUSINESS BOOK-KEEPING. By J. Routley. 3s. 6d. KEY (by R. A. Goodman), 8s. 6d. net.		
COMMERCIAL GOODWILL. By P. D. Leake. *Net*	15	0
COMPANY ACCOUNTING. By H. A. R. J. Wilson, F.C.A., etc. *Net*	12	6
COMPANY ACCOUNTS. By Arthur Coles. Revised by W. C. Wood, A.C.I.S. *Net*	10	6
COSTING, A PRIMER OF. By R. J. H. Ryall, F.C.R.A.	5	0
COSTING, DICTIONARY OF. By R. J. H. Ryall *Net*	12	6
COSTS AND COSTS ACCOUNTS. By H. O. Horton, F.C.A., and R. R. Mason, A.C.I.S. *Net*	10	6
DICTIONARY OF BOOK-KEEPING, PITMAN'S. By R. J. Porters, F.C.R.A. *Net*	5	0
ELEMENTARY GRADED BOOK-KEEPING EXERCISES. By A. J. Favell, B.Sc., A.C.I.S.	1	0
FINANCIAL STATEMENTS. By A. Lester Boddington, F.S.S. *Net*	15	0
GRADED BOOK-KEEPING EXERCISES FOR COMMERCIAL SCHOOLS. By A. J. Favell, B.Sc., A.C.I.S.	2	0
MANUAL OF COST ACCOUNTS. By H. Julius Lunt, F.C.A., F.C.I.S., F.C.W.A., and A. H. Ripley, F.C.W.A.	8	6
PRINCIPLES AND INTERPRETATION OF ACCOUNTS. By H. L. Ellis, M.Com.	3	6
PRINCIPLES OF ACCOUNTS. By J. Stephenson, M.A., M.Com., D.Sc. Part I, 3s. 6d. Part II, 5s.		
PRINCIPLES OF AUDITING. By F. R. M. DE PAULA, O.B.E., F.C.A.	8	6
SHARLES'S ELEMENTARY BOOK-KEEPING. By F. F. SHARLES, F.S.A.A., F.C.I.S.	2	6

CIVIL SERVICE

ARITHMETIC FOR CIVIL SERVICE STUDENTS. By T. H. Teare, B.Sc., and F. W. Teare, B.Sc.	4	0
CIVIL SERVICE GUIDE. By A. J. T. Day *Net*	3	6
CIVIL SERVICE ESSAY WRITING. By W. J. Addis, M.A.	2	0
CIVIL SERVICE SHORTHAND WRITERS' PHRASE BOOK. Compiled by Alfred Marshall, P.C.T.	2	0
ENGLISH FOR CIVIL SERVICE STUDENTS. By Walter Shawcross	2	6
TYPEWRITING EXAMINATION TESTS—CIVIL SERVICE. By Albert Potts and Maxwell Crooks	5	0
WOMEN AND THE CIVIL SERVICE. By Dorothy Evans, M.A. *Net*	3	6

Write for full particulars of our Civil Service Preparation Series (English, French, History, Geography, Mathematics, Science, etc.) 2s. 6d. to 5s. each.

COMMERCE, ETC.

	s.	d.
COMMERCE AND ACCOUNTS. By Alonza James, F.F.T.Com., F.R.Econ.S.	2	6
COMMERCE FOR COMMERCIAL AND SECONDARY SCHOOLS. By A. J. Favell, B.Sc. (Econ.), A.C.I.S.	3	6
COMMERCE, STAGE I. By A. James, F.F.T.Com., F.R.Econ.S.	1	6
COURSE IN BUSINESS ECONOMICS AND COMMERCE. By F. P. Tushingham, B.Com.Sc.	3	0
MANUAL OF BUSINESS TRAINING. By A. Stephen Noel, F.R.Econ.S.	5	0
MODERN BUSINESS AND ITS METHODS. By W. Campbell, Chartered Secretary	7	6
OFFICE PRACTICE. By W. CAMPBELL	3	6
PRINCIPLES AND PRACTICE OF COMMERCE. By James Stephenson, M.A., M.Com., D.Sc.	8	6
PRINCIPLES OF BUSINESS. By James Stephenson, M.A., M.Com., D.Sc. Part I, 2s. 6d. Part II, 3s. 6d.		
QUESTIONS AND ANSWERS ON COMMERCE. STAGE I. By A. J. Favell, B.Sc. (Econ.), A.C.I.S.	2	6
QUESTIONS AND ANSWERS ON COMMERCE. STAGE II. By A. J. Favell	3	6
THEORY AND PRACTICE OF COMMERCE. Edited by G. K. Bucknall, A.C.I.S. (Hons.)	7	6

ENGLISH AND COMMERCIAL CORRESPONDENCE

BUSINESS LETTERS IN ENGLISH. By W. J. Weston, M.A., B.Sc.	3	6
ENGLISH AND COMMERCIAL CORRESPONDENCE. By H. Nagaoka and D. Theophilus, B.A.	3	6
ENGLISH COURSE, STAGE I. By John Bennett	1	9
ENGLISH FOR COMMERCIAL STUDENTS. By H. W. Houghton, A.C.I.S.	2	0
ENGLISH GRAMMAR AND COMPOSITION. By W. J. Weston, M.A., B.Sc. (Lond.)	3	6
HIGHER BUSINESS CORRESPONDENCE. By R. Skelton . . *Net*	6	0
HOW TO TEACH COMMERCIAL ENGLISH. By Walter Shawcross, B.A. *Net*	3	6
IMPROVE YOUR ENGLISH. By W. J. Weston, M.A., B.Sc. *Net*	7	6
MANUAL OF COMMERCIAL CORRESPONDENCE. By Rowland Fry, B.Com.	3	6
MANUAL OF COMMERCIAL ENGLISH. By Walter Shawcross, B.A.	3	6
SPELLING AND VOCABULARY EXERCISES. By J. J. Murphy, B.A.	1	9
STANDARD ENGLISH. By Edward H. Grout, B.Sc., A.C.I.I. *Net*	7	6
USING THE KING'S ENGLISH. By W. J. Weston, M.A., B.Sc. *Net*	7	6

GEOGRAPHY AND HISTORY

COMMERCIAL ATLAS OF THE WORLD, PITMAN'S . . . . *Net*	5	0
COMMERCIAL GEOGRAPHY OF THE BRITISH ISLES. By W. P. Rutter, M.Com.	4	6
COMMERCIAL GEOGRAPHY OF THE WORLD. By W. P. Rutter, M.Com.	6	0

	s.	d.
Economic Geography. By John McFarlane, M.A., M.Com. .	10	6
Economic Geography, The Principles of. By R. N. Rudmose Brown, D.Sc.	6	0
Economic History of England. By H. O. Meredith, M.A., M.Com.	7	6
Geography of Commerce, The. By W. P. Rutter, M.Com. .	5	0
History of Commerce, The. By T. G. Williams, M.A., F.R.Hist S., F.R.Econ.S.	3	6

ECONOMICS

Economics. By Frederic Benham . . . . . . *Net*	7	6
Economics of Private Enterprise, The. By J. H. Jones, M.A..	7	6
Exercises in Economics. By A. Plummer, B.Litt., M.Sc. (Econ.), LL.D.	2	0
Guide to Economics. By F. H. Spencer, D.Sc., LL.B. . .	3	6
Substance of Economics, The. By H. A. Silverman, B.A. (Econ.)	6	0

BANKING AND FINANCE

Bankers and the Property Statutes of 1925 and 1926. By R. W. Jones . . . . *Net*	6	0
Bills, Bullion, and the London Money Market. By W. K. Duke . . . . *Net*	5	0
Book of the Stock Exchange. By F. E. Armstrong . *Net*	10	6
Capital Underwriting. By David Finnie, M.A., C.A. . *Net*	10	6
English Banking Methods. By L. Le M. Minty, Ph.D., B.Sc., B.Com. . . . . *Net*	10	6
Finance, Concise Dictionary of. By W. Collin Brooks . *Net*	12	6
Foreign Exchange and Foreign Bills in Theory and in Practice. By W. F. Spalding . . . . *Net*	10	6
Foreign Exchange: An Introductory Outline. By H. C. F. Holgate, B.Sc. (Econ.), Honours Cert. A.I.B., etc. . *Net*	2	6
Foreign Exchange, A Manual of. By H. E. Evitt, *Fellow of the Inst. of Bankers*, etc. . . . . *Net*	7	6
Foreign Exchange, A Primer of. By W. F. Spalding . *Net*	3	6
Foreign Exchange, Introduction to the Practice of. By H. E. Evitt, *Fellow of the Institute of Bankers* . . . . *Net*	3	6
Investment in Stocks and Shares. By E. D. Kissan and L. D. Williams . . . . *Net*	8	6
London Money Market, The. By W. F. Spalding . . *Net*	10	6
Money-Making in Stocks and Shares. By Sydney A. Moseley *Net*	7	6
Organization and Management of a Branch Bank. By F. J. Lewcock . . . . *Net*	5	0
Practical Banking. By H. E. Evitt . . . . . *Net*	5	0
Practical Branch Banking By A. Forrester Fergus . *Net*	8	6

	s.	d.
Scientific Investment. By Hargreaves Parkinson, B.A. . *Net*	10	6
Securities Clerk in a Branch Bank, The. By F. J. Lewcock, Cert. A.I.B., A.C.I.S. . . . . *Net*	7	6
Theory and Practice of Finance, The. By W. Collin Brooks *Net*	10	6
Unit Trusts and How They Work. By C. L. Rosenheim, M.A., and C. O. Merriman, A.C.A. . . . . . . *Net*	7	6

INSURANCE

Actuarial Science, The Elements of. By R. E. Underwood, M.B.E., F.I.A. . . . . *Net*	5	0
Compound Interest, Principles of. By H. H. Edwards . *Net*	5	0
Dictionary of Accident Insurance. Edited by J. B. Welson, LL.M., F.C.I.I., F.C.I.S. . . . . *Net*	60	0
Fire Insurance, Dictionary of. Edited by B. C. Remington, F.C.I.I., and Herbert G. Hurren, F.C.I.I. . . . . *Net*	30	0
Fire Insurance, Principles and Practice of. By F. Godwin *Net*	5	0
Guide to Marine Insurance. By Henry Keate. New Edition by L. Gurney, A.C.I.I. . . . . *Net*	3	6
Industrial Insurance Salesmanship. By Albert E. Sharp and Charles Taylor . . . . *Net*	5	0
Insurance Companies' Accounts. By G. H. Roberton, A.C.I.S., A.L.A.A. . . . . *Net*	10	6
Insurance Companies' Investments. By Harold E. Raynes, F.I.A., F.C.I.I. . . . . *Net*	7	6
Insurance Organization and Management. By J. B. Welson, LL.M., F.C.I.I., F.C.I.S., and F. H. Sherriff, F.I.A. *Net*	7	6
Life Assurance from Proposal to Policy. By H. Hosking Tayler, F.I.A., A.C.I.I., and V. W. Tyler, F.I.A. Revised by H. Noel Freeman, B.A., F.I.A. . . . . *Net*	6	0
Life Assurance, Dictionary of. Edited by G. W. Richmond, F.I.A., and F. H. Sherriff, F.I.A. . . . *Net*	40	0
Marine Insurance of Goods, The. By F. W. S. Poole. *Net*	10	6
National Health Insurance. By W. J. Foster, LL.B., *Barrister-at-Law*, and F. G. Taylor, F.I.A. *Net*	10	6
Principles and Practice of Industrial Assurance. By R. B. Walker, F.I.A., and D. R. Woodgate, B.Com., F.I.A. . *Net*	7	6

SHIPPING

Charter Parties of the World. By C. D. MacMurray and Malcolm M. Cree. With a Foreword by R. S. Dalgliesh *Net*	15	0
Shipbroking, Introduction to. By C. D. MacMurray and M. M. Cree . . . . *Net*	3	6
Shipping. By A. Hall, F.I.C.S. and F. Heywood, F.C.I.S. . *Net*	2	0
Shipping Office Organization, Management, and Accounts. By Alfred Calvert . . . . *Net*	6	0
Shipping Practice. By B. E. F. Stevens . . . . . *Net*	6	0

INCOME TAX

	s.	d.
INCOME TAX LAW, PRACTICE, AND ADMINISTRATION. By F. F. Sharles, F.S.A.A.; R. P. Croom-Johnson, LL.B., K.C.; L. C. Graham-Dixon, *of the Inner Temple, Barrister-at-Law*, and W. J. Eccott. Three Volumes . . . . . . *Net*	84	0
INCOME TAX FOR PROFESSIONAL STUDENTS. By W. T. Baxter, B.Com., C.A. . . . . *Net*	7	6
INCOME TAX, INTRODUCTION TO. By E. D. Fryer, A.L.A.A. *Net*	2	6
INCOME TAX AND SUR-TAX, SNELLING'S PRACTICAL. By C. W. Chivers . . . . *Net*	3	6

SECRETARIAL WORK, ETC.

	s.	d.
CHAIRMAN'S MANUAL. By Gurdon Palin, and Ernest Martin, F.C.I.S. . . . . *Net*	5	0
DICTIONARY OF SECRETARIAL LAW AND PRACTICE. Edited by Philip Tovey, F.C.I.S. Revised and Edited by Albert Crew, *Barrister-at-Law* . . . . . . *Net*	30	0
FORMATION AND MANAGEMENT OF A PRIVATE COMPANY. By F. D. Head, B.A. . . . . *Net*	7	6
GUIDE FOR THE COMPANY SECRETARY. By Arthur Coles. Revised by W. Cecil Wood, A.C.I.S. . . . . *Net*	6	0
MEETINGS. By F. D. Head, B.A. . . . . . *Net*	5	0
OLDHAM'S GUIDE TO COMPANY SECRETARIAL WORK. By G. K. Bucknall, A.C.I.S. (Hons.)	3	6
PRACTICAL SECRETARIAL WORK. By H. I. Lee, A.I.S.A., and W. N. Barr . . . . *Net*	7	6
PROSPECTUSES: HOW TO READ AND UNDERSTAND THEM By Philip Tovey, F.C.I.S., and H. Lambert Smith, B.Sc. *Net*	3	6
QUESTIONS AND ANSWERS ON SECRETARIAL PRACTICE. By E. J. Hammond. Revised by G. K. Bucknall, A.C.I.S. (Hons.) *Net*	5	0
SECRETARIAL PRACTICE OF PUBLIC SERVICE COMPANIES. By E. G. Janes, A.C.I.S. . . . . *Net*	10	6
TRANSFER OF STOCKS, SHARES, AND OTHER MARKETABLE SECURITIES. By F. D. Head, B.A. . . . . . *Net*	7	6

INDUSTRIAL ADMINISTRATION

	s.	d.
FACTORY ADMINISTRATION IN PRACTICE. By W. J. Hiscox. Revised by John R. Price, A.C.A., A.C.W.A., etc. . . . . *Net*	8	6
FOUNDRY ORGANIZATION AND MANAGEMENT. By James J. Gillespie *Net*	12	6
INDUSTRIAL PSYCHOLOGY IN PRACTICE. By Henry J. Welch, and G. H. Miles, D.Sc. . . . . *Net*	7	6
MODERN FOREMANSHIP. By T. H. Burnham, B.Sc., A.M.I.Mech.E. *Net*	7	6
MODERN WORKS MANAGEMENT. By G. Samuel Mason, B.Sc., M.I.Chem.E., etc. . . . . *Net*	8	6
PRINCIPLES OF RATIONAL INDUSTRIAL MANAGEMENT. By James J. Gillespie . . . . *Net*	10	6

		s.	d.
PRODUCTION PLANNING. By Clifton Reynolds	*Net*	10	6
TRAINING IN FOREMANSHIP AND MANAGEMENT. By James J. Gillespie	*Net*	7	6

BUSINESS ORGANIZATION AND MANAGEMENT

COMMERCIAL MANAGEMENT. By C. L. Bolling	*Net*	10	6
HIRE-PURCHASE ORGANIZATION AND MANAGEMENT. By V. R. Fox-Smith	*Net*	7	6
MODERN OFFICE MANAGEMENT. By H. W. Simpson	*Net*	7	6
OFFICE ORGANIZATION AND MANAGEMENT, INCLUDING SECRETARIAL WORK. By the late Lawrence R. Dicksee, M.Com., F.C.A., and Sir H. E. Blain, C.B.E. Revised by Stanley W. Rowland, LL.B., F.C.A.	*Net*	7	6

MUNICIPAL WORK

LOCAL GOVERNMENT OF THE UNITED KINGDOM, AND THE IRISH FREE STATE, THE. By J. J. Clarke, M.A., F.S.S.	*Net*	15	0
MUNICIPAL AND LOCAL GOVERNMENT LAW. By H. E. Smith, LL.B.	*Net*	10	6
OUTLINES OF CENTRAL GOVERNMENT, INCLUDING THE JUDICIAL SYSTEM OF ENGLAND. By John J. Clarke, M.A., F.S.S.	*Net*	6	0
OUTLINES OF LOCAL GOVERNMENT OF THE UNITED KINGDOM (AND THE IRISH FREE STATE). By John J. Clarke, M.A., F.S.S.	*Net*	5	0

ADVERTISING AND COMMERCIAL ART

POSTER, THE TECHNIQUE OF THE. Edited by Leonard Richmond, R.B.A., R.O.I.	*Net*	21	0
PRINCIPLES AND PRACTICE OF ADVERTISING, THE. By R. Simmat, M.A.	*Net*	15	0
PRINCIPLES AND PRACTICE OF MARKETING. By R. Simmat, M.A.	*Net*	12	6
ROUTINE OF THE ADVERTISING DEPARTMENT. By Reginald H. W. Cox	*Net*	10	6
WHAT THE PRESS ARTIST SHOULD KNOW. By John R. Turner	*Net*	7	6

SALESMANSHIP

ADMINISTRATION OF MARKETING AND SELLING. By Harold Whitehead, B.B.A., F.I.I.A.	*Net*	15	0
DIRECT MAIL ADVERTISING FOR THE RETAIL TRADER. By H. Dennett	*Net*	7	6
FROM THE CUSTOMER'S POINT OF VIEW. By Frank H. Thompson	*Net*	5	0
NEXT STEPS FORWARD IN RETAILING. By Edward A. Filene, with the collaboration of W. K. Gabler and P. S. Brown	*Net*	5	0

		s.	d.
TESTED SENTENCES THAT SELL. By Elmer Wheeler . .	*Net*	12	6
PERSONAL SALESMANSHIP. By R. Simmat, M.A. . .	*Net*	3	6
RETAIL MANAGEMENT. By C. L. Bolling . . .	*Net*	15	0
RETAIL SALESMANSHIP. By C. L. Bolling . .	*Net*	7	6
SALES MANAGEMENT. By C. L. Bolling	*Net*	10	6
SALESMANSHIP. By W. A. Corbion and G. E. Grimsdale .	*Net*	3	6
SALESMANSHIP. By William Maxwell . . .	*Net*	5	0
SALESMANSHIP, TECHNIQUE OF. By C. C. Knights . .	*Net*	5	0

TRANSPORT AND SHIPPING

Please send for separate list

STATISTICS

SIMPLIFIED STATISTICS. By Leonard J. Holman, B.Sc. (Lond.)	*Net*	3	6
STATISTICS FOR PROFESSIONAL STUDENTS By R. L. A. Holmes, B.Com.	*Net*	5	0
STATISTICS IN THEORY AND PRACTICE. By L. R. Connor, M.Sc. (Econ.), *Barrister-at-Law*	*Net*	12	6

REFERENCE BOOKS

ANNUITY AND LOAN REDEMPTION TABLES. By T. K. Stubbins, F.C.A., and Harold Dougharty, F.C.I.S., A.I.A. . .	*Net*	6	0
BUSINESS FORECASTING AND ITS PRACTICAL APPLICATION. By W. Wallace, M.Com. (Lond.)	*Net*	7	6
BUSINESS MAN'S GUIDE, PITMAN'S . . .	*Net*	6	0
BUSINESS TERMS, PHRASES, ETC.	*Net*	3	6
HANDBOOK OF COMMERCIAL AND TECHNICAL EDUCATION, PITMAN'S. Edited by Harold Downs	*Net*	15	0
MERCANTILE TERMS AND ABBREVIATIONS	*Net*	1	6
OFFICE DESK BOOK, PITMAN'S	*Net*	2	6

COMMON COMMODITIES AND INDUSTRIES

Each book in crown 8vo, illustrated . . . *Net* 3 0

In each of the handbooks in this series a particular product or industry is treated by an expert writer and practical man of business. Beginning with the life history of the plant, or other natural product, he follows its development until it becomes a commercial commodity, and so on through the various phases of its sale in the market and its purchase by the consumer.

(*Write for full particulars.*)

MADE IN GREAT BRITAIN AT THE PITMAN PRESS, BATH
(D 6382)